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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 188.

HALLET KILBOURN, JAMES M. LATTA, AND JOHN F. OLMSTEAD, APPELLANTS,

vs.

THOMAS SUNDERLAND AND CURTIS J. HILLYER.

FILED OCTOBER 27, 1885.

No. 261.

THOMAS SUNDERLAND AND CURTIS J. HILLYER, APPELLANTS,

vs.

HALLET KILBOURN, JAMES M. LATTA AND JOHN F. OLMSTEAD.

No. 262.

THOMAS SUNDERLAND, APPELLANT,

vs.

HALLET KILBOURN, JAMES M. LATTA, AND JOHN F. OLMSTEAD.

FILED APRIL 28, 1886.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

JUDD & DETWEILER, PRINTERS, WASHINGTON, DECEMBER 24, 1888.

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1 *Original Bill. Filed June 9th, 1881.*

Supreme Court of the District of Columbia, the 9th Day of June, A. D. 1881. In Equity.

THOMAS SUNDERLAND and CURTIS J. HILLYER, Plaintiffs,
vs.
HALLET KILBOURN and JOHN F. OLMSTEAD, Defendants. } No. 7764.

1st. The plaintiffs state as follows:

The plaintiff, Thomas Sunderland, is a citizen of the State of California, and the plaintiff, Curtis J. Hillyer, is a citizen of the State of Nevada, and they bring this suit in their own right.

2d. The defendants are citizens of the District of Columbia.

3d. That in the month of April, A. D. 1872, the plaintiffs and one William M. Stewart formed an enterprise and associated themselves together for the purchase, by way of speculation and investment, of a considerable quantity of unimproved real estate situate in the northwest quarter of the city of Washington, in the District of Columbia, under a mutual arrangement and agreement
2 between them, whereby the said Sunderland should have one-half interest and the said Hillyer and the said Stewart each one-quarter interest in such purchases; that, for the purpose of making the proposed purchases in a manner the most advantageous to their interests, the plaintiffs and said Stewart, in said month of April, 1872, engaged and employed as their agents a certain firm of real estate brokers then doing business as partners in said city of Washington under the firm name and style of Kilbourn and Latta, and composed of the defendants, Kilbourn and Olmstead, and one James M. Latta, and it was then and there agreed between the said firm on the one part and the plaintiffs and the said Stewart on the other part as follows:

That the plaintiffs and the said Stewart should entrust unto said firm as their agents aforesaid the negotiation for and the purchase of such real estate in the said quarter of the said city as the plaintiffs and the said Stewart might elect to acquire; that they
3 should furnish unto the said firm, when by the same thereunto required, such sums of money as might be requisite for the acquisition of the property, and that the plaintiffs and the said Stewart should pay unto the said firm, upon the purchases to be made by said firm on their account, a reasonable compensation by way of commission when and in case the said firm should make no charge by way of commission against the vendors of the property, but in case any such charge should be made by the said firm against the vendors that then the plaintiffs and the said Stewart should pay unto the said firm no commission whatever; that the said firm, in consideration of so being entrusted with the purchase of such real estate and of the commissions which it might derive upon such purchase, should ascertain and point out unto the plaintiffs and the said Stewart such lots and parcels of land in the said

section of the said city as, in the judgment of the said firm,
4 might be most advantageously acquired by the plaintiffs and the said Stewart; that the said firm should advise and counsel, to the best of its judgment, knowledge, and experience, the plaintiffs and the said Stewart in respect of the purchase of any particular parcel of land within the said section which they, on their own motion, might suggest to the said firm as desirable to be purchased on their account, and that in any and all cases the said firm should negotiate for the purchase of any real property to be acquired on account of the plaintiffs and the said Stewart at the lowest possible rate at which it could be obtained from the owner, and after ascertaining the price at which any such property might be obtained from the owner should fairly and to the best of the knowledge and ability of the said firm inform the plaintiffs and the said Stewart whether the said price was such as to render their acquisition of the property desirable and recommend to them
5 whether they should purchase the property or not; that if the plaintiffs and the said Stewart consented to such purchase the same should be made on their account by the said firm, and that upon receiving at its request from the purchasers the cash required in the first instance, and also the amount of deferred payments as the same might become payable, the said firm should make due settlement with the vendor or other person entitled to payment.

4th. That, in pursuance of said enterprise and the said agreements, in the months of May, June, and July, 1872, the said firm of brokers negotiated for and purchased on account of the plaintiffs and the said Stewart a number of unimproved lots and parcels of land in the northwest quarter of said city, the purchase price of which amounted to about $370,000, and during said period the plaintiffs and said Stewart placed in the hands of said brokers over $100,000 in money to meet the cash payments which the said firm represented
6 unto the complainants and the said Stewart as necessary to be made in order to the completion of said purchases; that in respect to each of the said purchases, before the same were finally concluded, the said firm announced to the plaintiffs and said Stewart the price they were required to pay for the property, and thereupon obtained their consent to the payment of such price, but in each case the said firm represented at the same time to the plaintiffs and the said Stewart that the said firm had faithfully and diligently negotiated with owner of the property to obtain the same at the lowest price, and that the price by the said firm so announced to the plaintiffs and the said Stewart was the lowest price for which the property could be at all obtained, and the plaintiffs and the said Stewart, in consenting to such price as aforesaid, relied entirely upon the truth of the said representations made by the said firm and upon the good faith and judgment of said firm in recommending the purchase.

7 5th. That in the latter part of April or early in May, 1872, the plaintiffs and said Stewart called the attention of said firm of brokers to square numbered 115, in said city, and requested

the said firm to ascertain the owner thereof and the price at which the said square could be purchased, and that on or shortly before the 25th day of said month of May the said firm informed the plaintiffs that the said firm had been in negotiations for the purchase of the said square from the owner thereof, and represented to the plaintiffs and the said Stewart that the sum of $65,000 was the lowest price at which the said square could be obtained from the owner thereof, and advised the plaintiffs and the said Stewart that the purchase of the said square at such price would be a desirable and advantageous one; that, relying upon these representations, the plaintiffs and said Stewart authorized the purchase of said square by the said
8 firm on their account at the price aforesaid, and, upon the further representations by the said firm that it was required by the seller that $20,000 of the purchase price should be paid in cash, the plaintiffs and the said Stewart paid to said firm the said sum of $20,000 as such cash payment; that upon the 25th day of May, in the same year, the then owner of said square executed his certain deed conveying the said square unto the said James M. Latta as trustee for the plaintiffs and said Stewart, and the said Latta accepted the said conveyance in trust for them, and they thereupon became the owners of said square.

But the claimants aver that the statements and representations made by the said firm in respect to the purchase of said square were false and fraudulent; that the actual purchase price paid and at which the said square was obtainable and obtained from the owner thereof by the said firm was not $65,000, but only
9 $40,000, and the cash required by the owner of the said square and, in fact, payable and paid on the purchase thereof by the said firm was not $20,000 but only $8,000; and that the said firm, fraudulently and for the purpose of cheating the plaintiffs and the said Stewart, charged and induced them to pay to the said firm, as the purchase price of said property, twenty-five thousand dollars ($25,000) more than was paid or was necessary to be paid by the said firm to the vendor of the said square; which said sum of $25,000 the said firm appropriated at the time to their own use and have since retained.

The plaintiffs further aver that neither they nor the said Stewart nor any nor either of them took any part in the negotiations concerning the purchase of said square nor had any communication with the owner thereof, but left the said purchase entirely to the said firm of brokers, whose duty it was and who promised and agreed with the plaintiffs and said Stewart to con-
10 duct and conclude the said purchase wholly in their interest and for their benefit.

Plaintiffs further aver that the real facts concerning said negotiations and the actual price paid for the said square of ground by the said firm was never disclosed by said firm or any member thereof to, but, on the contrary, was fraudulently concealed from, the said plaintiffs and said Stewart in such manner that they and each of them were at the time and until the year 1881 remained entirely ignorant thereof; that, relying upon the honesty and good faith of their said

agents, the plaintiffs and said Stewart made no inquiry or investigation in reference to the said transaction, and had no knowledge or suspicion of the facts constituting the fraud therein until about the month of March, 1881, at which time the plaintiff Sunderland,
11 having his suspicions aroused by certain other transactions and dealings with the members of said firm, examined the record of the conveyance of said square unto said Latta, as trustee (the original of which said conveyance and of all other conveyance made to said Latta, as trustee for the plaintiffs and said Stewart, had and have since the execution and record thereof been in the exclusive possession of the defendants and said Latta, and had and have never been seen by either of the plaintiffs or said Stewart), and finding the purchase price therein stated to be $40,000, made inquiries of parties having knowledge of the facts, and from them learned and for the first became aware that the sum of $40,000 was the real consideration paid by the said firm for the said square, and thus discovered the fraud which had been perpetrated by the said firm upon the plaintiffs and the said Stewart.

6th. That in the early part of the month of May, 1872, the
12 plaintiffs and said Stewart had under consideration the desirability of purchasing lot numbered 17, in square numbered 158, in said city, and requested the said firm, as their agents, to make inquiries respecting the said lot and ascertain the lowest price at which it could be purchased on their account; that subsequently, and shortly before the 23d day of May, 1872, the said firm informed the plaintiffs and *and* said Stewart that the said firm had been in negotiation with the owner of said lot and had ascertained that the same could be purchased for the sum of $8,316, and that this was the lowest price for which the said lot could be purchased from the owner thereof, and the said firm at the same time advised the plaintiffs and the said Stewart to purchase the said lot at said price; that the plaintiffs and said Stewart, relying upon the truth of the representations so made by the said firm, authorized the said firm to purchase the said lot on their ac-
13 count, at the price last above named: that on the 23d day of May, 1872, the said firm so in fact purchased the said lot, and informed the plaintiffs and said Stewart that a deed in due form had been executed for the said lot by the owner thereof to James M. Latta, as trustee for the plaintiffs and the said Stewart, and the said firm thereupon charged the plaintiffs and said Stewart with the amount last above stated as the purchase price thereof, and from funds in the hands of said firm belonging to the plaintiff, and said Stewart appropriated under color of said purchase the sum of $4,316, and represented to the plaintiffs and the said Stewart that the said sum was required by the vendor of the property as the real cash payment to complete the purchase, leaving the property encumbered in the sum of $4,000, which encumbrance was afterwards paid and discharged by the plaintiffs, but the plaintiffs aver that the representations so made by the said firm in
14 respect to the price of the said lot were false and fraudulent; that the actual purchase price paid and at which said lot was

obtainable and obtained by the said firm was not $8,316, but only $5,000, and that said firm, fraudulently and for the purpose of cheating the plaintiffs and the said Stewart, charged and induced them to pay to the said firm, as part of the purchase price of said property, $3,316 more than was paid or payable by the said firm to the vendor of the said lot, which said sum, $3,316, the said firm appropriated at the time to its own use and have ever since retained.

The plaintiffs further aver that neither they nor either of them nor the said Stewart took any part in the negotiations concerning the purchase of the said lot, but left such negotiation and purchase entirely to the said firm of brokers, whose duty it was and who promised and agreed with the plaintiffs and said Stewart to
15 conduct and conclude the said negotiation and purchase wholly in their interest and for their benefit.

And the plaintiffs further aver that the real facts concerning said negotiations and the actual price paid for the said lot by said firm were never disclosed by the said firm or any member thereof to, but, on the contrary, were fraudulenty concealed from, the plaintiffs and said Stewart in such manner that they and each of them were at the time and until the year 1881 remained wholly ignorant thereof; that, relying upon the honesty and good faith of the said firm, the said plaintiffs and said Stewart made no inquiry or investigation in reference to the said transaction and had no knowledge or suspicion of the facts as aforesaid constituting the fraud therein until about the month of March, 1881, when the said facts were discovered by the plaintiff Sunderland at or about the same time and
16 through inquiries of the same character and induced by the same causes as those stated in the preceding paragraph of this bill in reference to square numbered 115.

7th. The plaintiffs further aver that upon the same inducements and under the same promises, undertakings, and agreements as hereinbefore stated in the fifth paragraph of this bill in respect to square numbered 115, the said firm, in June, 1872, negotiated, and on the 7th day of said month purchased for the plaintiffs and said Stewart square numbered 155, in said city; and then and there represented to them that the lowest price at which said square numbered 155 could be obtained for them from the owner thereof by the said firm was $72,970.30, and at such price advised the plaintiffs and the said Stewart to acquire such square, to which they, in full reliance upon the integrity and good faith of said firm, accordingly
17 consented, and thereupon the said price was by said firm charged for said square to and subsequently paid by the plaintiffs and said Stewart, whereas in fact the actual purchase price paid and payable for said square numbered 155 by said firm was only $67,650.75, and the balance of $5,319.55 was fraudulently taken and appropriated by the said firm to its own use and the fact thereof by said firm fraudulently concealed from the plaintiffs and the said Stewart and never discovered by plaintiffs or by the said Stewart until by the means and in the manner and at or about the same time hereinbefore stated in reference to square numbered 115.

And the plaintiffs further aver that between the months of May

and July, 1872, both inclusive, the said firm purchased for and on account of the plaintiffs and the said Stewart, as their agents aforesaid, the following other real estate in the said city known
18 and designated on the ground plat or plan thereof as lot numbered eight (8), the west half of lot numbered nine (9), and lot numbered ten (10), all in square numbered one hundred and fifty-eight (158), and at and before the times of said several purchases the said firm represented unto the plaintiffs and the said Stewart that the said firm had negotiated with the several owners of the said lots respecting the purchase thereof, and had ascertained and that the truth was that the lowest price at which the said lots could be obtained for them from the said owners by the said firm was in the aggregate the sum of $12,289.50, and the said firm then and there further represented unto the plaintiffs and the said Stewart and advised them that it would be to their interest and advantage to purchase the said lots at the aggregate price aforesaid; and the plaintiffs and the said Stewart, confiding in the honesty and good faith of the
19 said firms and in the truth of the said representations, consented to the purchase by the said firm, on their account, of the said lots at the price aforesaid, and the said firm thereupon purchased the said lots for the plaintiffs and the said Stewart and charged them on account thereof the sum of $12,289.50, which was accordingly paid by the plaintiffs and the said Stewart; but the plaintiffs, upon information and belief, aver that the said representations and advice so made and given to the plaintiffs and the said Stewart were falsely and fraudulently made and given and were conceived and contrived for the purpose of cheating the plaintiffs and the said Stewart, and that the lowest price at which the said lots were in fact obtainable and obtained from the owners thereof by the said firm was not in the aggregate the sum of $12,289.50, but only the sum of $9,625.80, and that latter was the real
20 and actual price and consideration upon which the said firm so purchased the said lots for the plaintiffs and the said Stewart, and the difference between the said two sums, being the sum of $2,663.70, was fraudulently charged against and taken from the complainants and the said Stewart by the said firm.

And the plaintiffs aver that neither they nor either of them nor the said Stewart had at the time any reason to suspect or imagine the fraud thus perpetrated upon them; that it was deliberately concealed from them and each of them by the said firm, and that the plaintiffs never became aware of the said fraud or of any of the facts constituting the same until the month of May, 1881, when the plaintiffs, being about to institute the present proceeding, examined the record of a certain case then pending in the supreme court of the said District of Columbia, entitled Kilbourn *et al. vs.* Latta,
21 and numbered in equity No. 5919, and from the contents thereof were for the first time made acquainted with the said fraud and the facts constituting the same.

And the plaintiffs aver that the plaintiff Hillyer for about one-half and the plaintiff Sunderland for nearly all of the time which elapsed between the years 1872 and 1876, and from the latter date

until the present year, were absent from the District of Columbia, being either in Europe or upon the Pacific coast.

8th. The plaintiffs further aver that about the time the first purchases were made by the said firm on account of the plaintiffs and the said Stewart, as above set forth, it was suggested and recommended by the said firm that for the purpose of making more advantageously the proposed purchases, and also for the greater convenience of making conveyance of such portions of pur-
22 chased property as might be resold, the title to all lots and real estate purchased or to be purchased by said firm on account of the plaintiffs and the said Stewart should be taken in the name of one of the members of the said firm as trustee for the plaintiffs and said Stewart, and that according- the title to all said purchased property was, through the procurement of said firm, conveyed to James M. Latta as such trustee, and said Latta received and took into his possession all of the deeds and muniments of title to said property and has ever since retained the same, nor have the same or any part of them at any time been in the possession of or exhibited to or seen by either the plaintiffs or the said Stewart.

And some time in the month of March of the present year the complainants, through the said Sunderland, and under the circumstances set forth in the 5th paragraph of this bill in respect
23 of their discovery of the fraud perpetrated upon them by the said firm in regard to the purchase of square numbered 115, for the first time ascertained or had reason to suspect and the truth was that the said firm, in order more fully to conceal their fraudulent acts and doing- against the plaintiffs and the said Stewart, had caused the said deeds made to the said Latta as trustee for the *com*-plaintiffs and the said Stewart to be for the most part withheld from the record for an unreasonable period, and not to be recorded until several months after the execution thereof.

9th. The plaintiffs further aver that in the month of December, 1872, the said William M. Stewart, being desirous of abandoning the said speculation and of freeing himself from all interest in the purchases which had been made thereunder and all obligations in respect to the same, assigned and conveyed in writing the entire
24 interest of him, the said Stewart, in all of the property previously purchased by the complainants and himself as aforesaid unto the said Sunderland, it being at the same time agreed between the said Stewart and the said Sunderland, with the consent of the said Hillyer, that the said Sunderland should refund unto the said Stewart the moneys theretofore advanced by him on account of said purchases, and should assume his, the said Stewart's, share of all liabilities in respect to deferred payments thereon and of every character whatsoever; and it was further agreed, as aforesaid, that the said Sunderland should be substituted in respect to the interest of said Stewart as the original purchaser with the same rights and obligations in every regard as if said Stewart had never been interested in the purchased property; that this agreement was fully known and at the time thereof fully assented to by the said firm,
25 and the said firm agreed that the said Sunderland should, as

to themselves, be substituted to all the rights and obligations of said Stewart, in respect to said purchases and property, in the same manner and with the same effect as if he, the said Sunderland, had been the original purchaser and the said Stewart had had no interest therein. Therefore the said Stewart had no interest in any portion of the property and no connection with any of the dealings relating to the same.

10th. The plaintiffs further aver that after the completion of the purchases hereinbefore mentioned all of the property so purchased as aforesaid, together with two other parcels of unimproved real estate situated in the same quarter of said city and owned jointly by the plaintiffs, and of which the purchase price paid by them amounted to about $80,000, were left in the hands of said
26 firm of brokers for resale, upon commissions whenever a satisfactory price therefor could be obtained; and in consideration of the probable prospective commissions to be derived by said firm from such resale the said firm agreed with the plaintiffs that it would keep in its own books an account of said property and ascertain and notify the plaintiffs of all payments necessary to be made by them on account of interest, deferred principal, and general and special taxes, and upon receiving the funds therefor from the plaintiffs disburse said funds as might be requisite and proper and keep an account of all such receipts and disbursements without any charge to plaintiffs for said services except for the actual expenses advanced by said firm; that this arrangement was, in fact, and was considered equally by plaintiffs and the said firm to be highly advantageous to said firm, as both the said firm and the plaintiffs believed that
27 within a short period very considerable sales of said property would and could be made at satisfactory prices.

The plaintiffs aver, however, that owing to the financial crisis and general business depression commencing in 1873 and continuing for several years thereafter no sales were in fact made of any portion of said property prior to January 1st, 1877.

11th. Plaintiffs further aver that after the making of said arrangement for several years together and prior to January 1st, 1877, the plaintiffs from time to time remitted large sums of money to said firm, aggregating more than $250,000, to be by said firm employed and expended in making payments on account of said property, and that on the 31st day of December, 1876, there was in the hands of said firm from such remittances a large sum of money, to wit, not less than $20,000, belonging to the plaintiffs and held by said
28 firm for the purpose aforesaid; that on or about December 31st, 1876, the said firm secretly and fraudulently diverted from the funds of the plaintiffs then in the hands of said firm the sum of $16,526 and appropriated the same to their own use, and have ever since wrongfully retained the same.

Plaintiffs further aver, upon information and belief, that the only pretext for the misappropriation and conversion of said sum of money from the funds of the plaintiffs was that on or about the 31st of December, 1876, the said firm caused an entry to be made upon their books of a debit charge against the plaintiffs for the care and

management of their property from June, 1872, to the date of the entry of the said charge of $16,526, and then pretended that the amount so taken by them was in satisfaction of the claim stated in said entry; but the plaintiffs aver that in fact neither the said
29 firm nor any member thereof had exercised any care or management over any part of plaintiffs' property otherwise than in the manner and under the arrangements and agreements above stated, and that nothing was in fact due to the said firm therefor, and that this the said firm and the several members thereof at the time well knew.

Plaintiffs further say that neither the defendants nor said Latta ever disclosed to the plaintiffs or either of them that said funds had been so taken by said firm, or that said entry or charge had been made upon the firm books, or that the said firm had or pretended to have any claim whatsoever against the plaintiffs, for the care and management of their property or otherwise, but, on the contrary, the said firm and each of the members thereof carefully concealed from the plaintiffs all of said facts until the latter part of June,
30 1878, up to which time each *time each* of the plaintiffs was entirely ignorant of the said entry, charge, and claim; that between the 26th day of June, 1872, and the 20th day of June, 1878, no account had been by said firm rendered to the plaintiffs or either of them, nor any communication, written or oral, made to them or either of them, by said firm from which the plaintiffs or either of them could infer or suspect that said funds or any portion of the same were to be or had been taken by the said firm, or that any claim or charge of the character stated in said entry upon the books of the said firm had been or was intended to be made, but that on or shortly after the 20th day of June, 1878, the plaintiffs, then for the first time in many years being together in Washington, demanded from the said firm of Kilbourn & Latta a general account current, which was furnished to them by the defendants,
31 and that in said account they for the first time discovered that said entry had been made in the books of said firm, and the amount last above stated had been abstracted from the funds of plaintiffs and wrongfully appropriated by the said firm; that they thereupon protested to the defendants against the said transaction, and demanded of them either to refund the said amount at once to the plaintiffs or to apply it in discharging the indebtedness of plaintiffs upon their said property in accordance with the trust upon which it had been placed in their hands, stating to said defendants that unless this was done they, the plaintiffs, would institute legal proceedings for its restitution, but that the defendants and said Latta then neglected and refused, and until the present time have neglected and refused, to repay or disburse on plaintiffs' account the said sum of money or any part thereof, and until the rendi-
32 tion of the said account by the said firm the plaintiffs, since the year 1872 and the withdrawal from their enterprise of the said Stewart, as hereinbefore mentioned, had been entirely unaware of the state of accounts between themselves and the said firm; that no account had been presented or given to them or either of

them by the said firm; that they had never made any request for any such account of the said firm or demanded from it the balance due them; that they kept no accounts of their transactions with said firm, and relied for their protection implicitly upon the honesty and good faith of the said firm.

13th. The aforesaid James M. Latta is now, and for more than two years last past has been, a citizen and resident of the State of Indiana, and the said William M. Stewart is a citizen and resident of the State of California, and for the reason that they are
33 without the jurisdiction of this court they are not made parties defendant herein, but the plaintiffs pray that proper process may issue from this honorable court to make them parties defendant and to require them to appear and answer to this bill if they shall at any time come within the jurisdiction of the court.

The plaintiffs, who expressly waive an answer under oath from the defendants and also from the said James M. Latta, in case he shall hereafter be made party defendant hereto, pray that the defendants, Hallet Kilbourn and John F. Olmstead, and also the said James M. Latta and William M. Stewart, if they should come within the jurisdiction, may be by proper process made parties hereto, and that the defendants and the said Latta, when and if made party, may account fully to the plaintiffs of and concerning their said trust in respect to the said transactions hereinbefore set forth,
34 and be required by the decree of the court to pay over to the plaintiffs all such sums of money as shall be found equitably due from them to the plaintiffs on account of the said several breaches of trust, and particularly that they and each of them may be decreed to pay to plaintiffs the sum of $25,000, with interest thereon from the 25th day of May, 1872, at the rate of six per centum per annum; the sum of $3,316, with interest thereon at the same rate from the 23d day of May, 1872; the sum of $5,319.55, with interest thereon at the same rate from the 17th day of June, 1872; the sum of $2,663.20, with a like rate of interest from the 1st day of July, A. D. 1872, and the further sum of $16,526, with interest thereon at the same rate from the 31st day of December, 1876, and for such other and further relief as to the court may seem proper in the premises.

The defendants to this bill are Hallet Kilbourn, John F. Olmstead.

35 We do solemnly swear that we have read over the above bill by us subscribed and know the contents thereof; that the facts therein stated upon our own knowledge are true, and that the facts therein stated upon our information and belief we believe to be true.

THOS. SUNDERLAND.
C. J. HILLYER.

Subscribed and sworn to before me this 1st day of June, A. D. 1881.

[SEAL.] JOHN BULL,
Notary Public.

JOHN SELDEN,
Sol. for Compl'ts.

36 *Subpœna to Answer.*

In the Supreme Court of the District of Columbia, June 9, 1881.

THOMAS SUNDERLAND *et al.*, Complainant-,
against
HALLET KILBOURN *et al.*, Defendant-. } No. 7764, Eq. Doc. 21.

The President of the United States to Hallet Kilbourn and John F. Olmstead, defendants:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the original bill under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.] R. J. MEIGS, *Clerk, &c.*

MEMORANDUM.—That the defendant herewith served is to enter appearance in this suit in the clerk's office, on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Summoned both June 9, 1881.

C. E. HENRY, *Marshal.*

37 *Appearance of Defendants. Filed Jan'y* 29, 1881.

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND *et al.*
vs.
HALLET KILBOURN *et al.* } 7764, Equity Docket 21.

The clerk will please enter my appearance for the defendants Kilbourn and Olmstead.

January 29, 1881.

ENOCH TOTTEN.

Appearance as ordered entered by the clerk.
Jan'y 29, 1881.

38 *Joint and Several Ans. Filed Oct.* 1, 1881.

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and CURTIS J. HILLYER, Complainants, *vs* HALLET KILBOURN and JOHN F. OLMSTEAD, Defendants. } Eq. No. 7764.

Joint and several answer of Hallet Kilbourn and John F. Olmstead.

The joint and several answer of the defendants, Hallet Kilbourn and John F. Olmstead, to the bill of complaint of the above-named complainants respectfully shows as follows, to wit:

First. They admit the citizenship of the complainants as stated.

Second. These defendants are residents of the District of Columbia.

Third. In answer to the averments in the third paragraph of the bill they say that they have no doubt that the complainants
39 and Stewart were associated together as stated in the beginning of the said paragraph, but they deny that there was ever any such employment of the firm of Kilbourn and Latta by the said complainants and Stewart as therein alleged. They aver the truth to be and state that the firm of Kilbourn and Latta, at the time mentioned in the said bill, was composed of these defendants and James M. Latta, who were engaged in the business of buying and selling real estate on their own account and for others for commissions, and in negotiating loans, discounts, and generally in carrying on a brokerage business in real estate and personal property that it was their business to keep posted touching the real estate market in reference to the particular pieces of property for sale and the prices thereof and of all persons who desired to buy property, and to transact business for such persons as might see proper to employ them. These defendants deny that the said firm was ever en-
40 gaged or employed by the said complainants and the said Stewart, as alleged in the said bill, or that they transacted business for the said complainants and the said Stewart in any other manner than as they transacted business for the general public. They deny that there was at the time alleged any bargain or understanding between the said firm and the said complainants and Stewart touching the compensation that was to be paid to the said firm for conducting transactions in the line of their business. They allege and aver the truth to be that there was no general understanding or agreement whatsoever between the said parties and the said firm, and that whenever the services of the said firm were desired by the complainants and the said Stewart such services were secured in particular instances and for particular services. There was no agreement or understanding that the business of said

complainants and the said Stewart should be transacted by
41 the said firm, and the said complainants and the said Stewart were under no obligation to deal with the said firm in preference to other real estate agents, and the said firm was under no obligation to transact business for the said complainants at any time; and they say that the said complainants and the said Stewart did in at least one instance secure the services of another real estate agent, through whom they conducted an extensive transaction in the way of purchasing a large quantity of real estate in the city of Washington during the period mentioned in the said bill. It is not true that it was agreed by the said complainants and the said Stewart on the one side and the said firm on the other that the said firm should be entrusted, as agents of the said complainants and Stewart, for the purchase of real estate in any part of the city of Washington as they, the said complainants and Stewart, might elect to
42 acquire; and they further deny the averments contained in the said paragraph touching the compensation to be paid to the said firm by the said complainants and Stewart, and they repeat that there was no agreement as to compensation; and they further say that the relations existing between the complainants and the said firm during the period mentioned in said bill were no other than and not different from those existing between said firm and any purchaser of real estate transacting business with said firm.

Fourth. They allege in answer to the averments in the fourth paragraph of the bill that they presume the amounts specified in the beginning of the said paragraph are correctly stated, but for greater accuracy refer to the accounts rendered said Sunderland and Hillyer, which will show the precise amounts; but they deny emphatically that they made any such representations as are stated in the latter part of the said paragraph of the bill. They aver and allege
43 the truth to be that they had on hand a great many lots and pieces of land for sale, and that in each instance where the said complainants and Stewart purchased from said firm the said complainants and Stewart were informed of the price at which the said property could be by them purchased, and in every or nearly every instance the said Sunderland or the said Hillyer, or both of them, actually examined such property and decided for themselves as to whether or not they would buy the same upon the terms proposed, and where the proposal was accepted by the said complainants the agreement of purchase was carried out in each particular instance. During the time of the transactions mentioned and described in the said bill the real estate market in Washington was very active and the said firm and the members thereof were
44 individually and as a firm very busily engaged in making sales and purchases of property in the city of Washington for themselves and others, and it was not in all cases an easy thing to secure property which any given purchaser might desire; and they allege the truth to be that the said complainants in every instance relied upon their own judgment and decided for themselves whether to purchase property or not.

Fifth. In answer to the averments contained in the fifth paragraph

of the said bill they say that the allegations contained in the first part of the said paragraph down to the word " purchased," where it first occurs in the said paragraph, are untrue, and they also deny that the said firm made any representations to the said complainants as to the lowest price for which the said property could be obtained from the owners thereof. They allege the truth to be that the
45 said firm informed the said complainants what the lowest price was for which they, the complainants, could secure the said property, and they also deny that the said complainants and the said Stewart "authorized" the purchase of the said square on their own account. They say the fact is that the firm informed the said complainants Sunderland and Hillyer that they had been in negotiation for said square one hundred and fifteen for about two years, and that the lowest price for which they, said complainants, could obtain the said property was sixty-five thousand dollars; and these defendants allege that the said firm had been negotiating for the said property for about two years, and that they had at one time partially arranged to purchase the said property for twenty-five thousand dollars, with the persons interested in the said property,
46 and that the said property advanced from time to time, and that they finally secured the refusal thereof at the price of forty thousand dollars for the benefit of the said firm and not for the benefit of any of their customers, and that this agreement with the owners of the said property was in existence, and the said firm had the right to take the said property at the price of forty thousand dollars before they had had any dealings with the said complainants. It is probably true that the sum of twenty thousand dollars was paid, as stated in the said paragraph of the said bill, but for greater accuracy reference is made to the aforesaid accounts, which will show the precise amounts and the dates thereof. These defendants distinctly and emphatically deny the charges of fraud and cheating made against them in the said paragraph of the
47 said bill, and again deny that there was any promise and agreement between the parties that the said firm should conduct and conclude the said purchase wholly in the interest of the said complainants and the said Stewart, as alleged in the said paragraph. In reference to the averments contained in the said paragraph in explanation of the manner in which the complainants discovered the alleged fraud these defendants say they know nothing, but they aver that at the time the conveyance was made to the said Latta the true consideration was expressed in the said deed, and that the said deed was subsequently and within a few months recorded upon the public records of the District of Columbia, where the complainants could have obtained all the information disclosed thereby. These defendants are informed, and upon their information state in this connection, that the complainants are both lawyers by
48 profession; and they further say that during the periods in which said deeds were held by said firm the plaintiffs had free access to said deeds and to all other papers relating to their business in the hands of said firm.

Sixth. In answer to the averments in the sixth paragraph of the

said bill the defendants say that the only conversation or understanding which was ever had between the said complainants and the said firm was that the said complainants informed the said — that they were ready and willing at any time, until further orders, to take and pay for any lot or lots in said square one hundred and fifty-eight at the rate of fifty cents per square foot, and they distinctly deny that the said firm was at any time requested by the said complainants or either of them to purchase the said property or any part of it for them or on their account, and they
49 further say that the said complainants had no information, as these defendants are informed and believe and therefore aver, touching the said lot seventeen until the said firm offered it to them at the price of fifty cents per square foot, which offer the said complainants subsequently accepted, and the said purchase was accordingly made at that rate, and the conveyance was made to the said Latta as stated in the said bill, and the deed to him reciting the proper and true consideration was placed upon the public records of the District of Columbia. They deny that the said firm ever promised the said complainants or either of them or the said Stewart to conduct and conclude any negotiations for said parties for the purchase in their interest and for their benefit of the said property; that the said property was held and controlled by the said firm,
50 and that it was sold to the said complainants as hereinbefore stated, and not otherwise, and they deny all the charges of fraud and fraudulent concealments made and contained in the said bill.

Seventh. In answer to the averments contained in the seventh paragraph of the said bill they aver that the said property was owned and held by one John Stearns, and that these defendants have never received anything in consequence of the transaction about the said property referred to in the said paragraph of the bill, except that the said firm received ordinary commissions from the sale thereof and nothing beyond. At the time of the sale to the said complainants the said property was in the hands of the said firm for negotiation on account of the said John Stearns, and they deny that the said complainants or either of them ever "requested" the said firm to buy the said property for them.

51 In answer to the averments contained in the second subdivision of the said paragraph these defendants say that the said complainants well knew during the time of the transactions therein mentioned that the firm owned lot ten and had owned it for about a year; and they aver that the said lot ten was purchased by the said complainants from the said firm, as was lot seventeen, in the same square, under the circumstances mentioned and set forth in the sixth paragraph of this answer. Further answering the averments of the said subdivision relative to the said lots eight and nine, they say that they bought the said property and sold it to the said complainants at fifty cents per square foot, and they aver that the transactions in relation to lots eight, part of nine, ten, and seventeen, in square one hundred and fifty-eight, were simply ordinary transactions of a purchase by one party

52 from another, wherein the firm was seller and the said complainants were the purchasers; and they further say that the said complainants were about to go to Europe or elsewhere, and that before going they arranged for the purchase of the said lots in square one hundred and fifty-eight at the price of fifty cents per square foot; and, further answering the averments contained in the said paragraph of the said bill, these defendants deny all charges of fraud, cheating, or fraudulent concealments made against them by the said complainants in the said paragraph.

Eighth. In answer to the averments contained in the eighth paragraph of the said bill they say that it is true that the conveyances were made for convenience to James M. Latta, as trustee, but whether it was done at the suggestion of the said firm or any of its members or at the suggestion of the complainants these defendants do
53 not remember, and they presume that it is true that the said James M. Latta has the said original deeds in his possession, but inasmuch as the deeds were made a matter of public record the fact is not deemed material.

In answer to the second subdivision of the said paragraph these defendants say that it is true that the said deeds were withheld from record for a short period of time, to wit, for about the period of five or six months, but that they were so withheld at the request and with the consent of the said complainants for the purpose of benefiting the business of the said Sunderland and Hillyer and Stewart.

Ninth. These defendants admit the truth of the averments in the ninth paragraph of the bill.

Tenth. In answer to the averments in the tenth paragraph of the said bill these defendants deny that there was ever any such agreement made by the said firm with the said complainants as
54 set forth in the said paragraph. They allege the truth to be that after Mr. Hillyer returned from Europe the question of compensation to the said firm for the care and management of the said property was discussed. The firm insisted that, for the care and management of the said property and for the services which they had already rendered from the beginning of the transactions for the said complainants, the firm should be allowed at the rate of one per cent. per annum upon the purchase price of the property. The said complainant Hillyer expressed it as his opinion that one per centum per annum was too much; but these defendants think that the said Hillyer at the time suggested that perhaps three-quarters of one per cent. would not be unreasonable, and that there the negotiations and conversations touching the subject of compensation ended, and nothing further was ever said between the parties upon the subject, so far as these defendants know or are
55 informed and believe. About the time of the dissolution of the said firm, in 1876, a settlement was made between the members thereof, and the sum of five thousand dollars per annum was charged against the said Sunderland and Hillyer and the said Sunderland individually for services rendered for their advantage and in their various transactions and in the care and management of the large tracts and parcels of real estate owned and held by

them in the District of Columbia, which charge was in accordance with the pre-existing agreements and understanding between the members of said firm. The care and management of the said property consisted in investigating questions arising under the special improvements made, examination of tax bills and payment thereof, and, in general, such services as were necessarily rendered by owners of property for themselves during the improvements which took
56 place during the period from 1871 to 1875 upon the public streets in the city of Washington, and they aver that the sum of five thousand dollars per annum was not an unreasonable charge. After the dissolution of the said firm an account was rendered to the said Sunderland and Hillyer, in which this charge appeared. These defendants are unable to give the exact date, but the account itself is referred to for greater accuracy, not only as to the date thereof, but as to the matters and things constituting the said account.

Eleventh. Answering the averments in the eleventh paragraph of the bill, these defendants say that they presume the amounts set forth in the said paragraph are correct, but for greater accuracy refer to the aforesaid accounts of the said firm. These defendants say that they did render extensive and valuable services in the care and management of the property of the said complainants,
57 and that the amount charged is not unreasonable. These defendants say that the said complainants could at any time have had access to the books of account of the said firm, and that they had been informed that the said firm would charge the complainants for their services in taking care of their said property and in managing and conducting the business of purchasing real estate, and they deny that there were any concealments on the part of the said firm touching the business between the said complainants and the said firm. They also say that it is not true, as alleged in the said paragraph of the said bill, that the complainants demanded of the firm that the said money should be refunded to them until about the time of the institution of this suit. The only thing that was said by the said parties was that the charge was too large, but it was not denied by the said complainants that the firm
58 was entitled to compensation for services rendered in the care and management of said estate. Further answering, these defendants say that at the time many of these pieces of property were sold to the said complainants the notes of the firm or of the individual members thereof were given for deferred payments for the purpose of accommodating the said complainants, Sunderland and Hillyer, and that when these notes fell due the said Sunderland and Hillyer, contrary to their agreement and to good faith, neglected to furnish the money with which to pay the said notes, and that the individual members of the said firm and the said firm were greatly embarrassed and injured in their credit in consequence of the misbehavior in this regard on the part of the said complainants, Sunderland and Hillyer.

Twelfth. In answer to the twelfth paragraph of the said bill these defendants say that James M. Latta and William M. Stewart
59 are necessary parties, in their judgment (as they are advised

by counsel and believe), to this bill, and that they ought to be made parties thereto in a direct and distinct manner. The said Latta and said Stewart each own, as these defendants are informed and believe, large and valuable tracts of real estate in the city of Washington, by means of which their appearance may be enforced.

And these defendants deny all and all manner of fraud, concealment, cheating, and conspiracy with which they are charged in and by said bill, and pray that they may be hence dismissed with their reasonable costs in this cause sustained.

HALLET KILBOURN.
JOHN F. OLMSTEAD.

ENOCH TOTTEN,
Sol'r for Kilbourn & O.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

60 Hallet Kilbourn, being first duly sworn, deposes and on his oath says that he is one of the defendants in the above-entitled cause; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the facts therein stated upon personal knowledge he knows to be true, and those therein stated upon information and belief he believes to be true.

HALLET KILBOURN.

Subscribed and sworn to before me this 30th day of September, 1881.

[SEAL.] JOHN E. BEALL,
Notary Public.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

John F. Olmstead, being first duly sworn, deposes and on his oath says that he is one of the defendants in the above-entitled cause; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the facts stated upon personal knowl-
61 edge he knows to be true, and those therein stated upon information and belief he believes to be true.

JOHN F. OLMSTEAD.

Subscribed and sworn to before me this 30th day of September, 1881.

[SEAL.] JOHN E. BEALL,
Notary Public.

Replication. Filed Oct. 3d, 1881.

In the Supreme Court of the District of Columbia, the 3d Day of October, 1881. In Equity.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN and JOHN F. OLMSTEAD. } No. 7764.

The complainants join issue with the defendants.

JOHN SELDEN,
Sol. for Compl'ts.

62 *Stipulation as to Time for Completing Evidence. Filed Oct. 10th,* 1881.

In the Supreme Court of the District of Columbia, the 7th Day of October, 1881. In Equity.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN and JOHN F. OLMSTEAD. } No. 7764.

It is hereby stipulated and agreed by and between the parties to this cause, through their solicitors of record therein, that the evidence on the part of the complainants in support of their bill shall be taken and completed within sixty days from and after the 7th day of October, 1881; that the evidence on the part of the defendants in support of their defense shall be taken and completed within sixty days from and after the expiration of the said sixty days so limited for taking and completing the evidence as aforesaid on the part of the complainants, and that the evidence of the complainants in reply shall be taken and completed within thirty
63 days from and after the expiration of the period herein limited for taking and completing the evidence for the defendants.

JOHN SELDEN,
Sol. for Compl'ts.
ENOCH TOTTEN,
For K. & O., Def'ts.

Motion for App't of Ex'm'r to Take Test'y. Filed Oct. 12th, 1881.

In the Supreme Court of the District of Columbia, the 11th Day of October, 1881. In Equity.

THOMAS SUNDERLAND *et al.*
vs.
HALLET KILBOURN *et al.* } No. 7764.

And now come the complainants, through their solicitor, and, showing to the court that the testimony of William M. Stewart, a non-resi-

dent of the District of Columbia, is competent and material under and upon the issues raised in the above-entitled cause, prays that an examiner may be appointed to take the testimony of the said William M. Stewart upon written interrogatories to be filed in the clerk's office (at least ten days before the issue of any commis-
64 sion to the said examiner) by the said complainants and upon due notice of such filing to the respondents or their solicitor.

JOHN SELDEN,
Sol. for Compl'ts.

I assent to this.

ENOCH TOTTEN, *For Def'ts.*

Appearance of J. H. Ralston for Compl'ts. Oct. 14, 1881.

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND *et al.*
vs.
HALLET KILBOURN *et al.*
} 7764, Equity Docket 21.

The clerk will please enter appearance of J. H. Ralston as one of the solicitors for the complainants.
Oct. 14, 1881.

J. H. RALSTON,
Sol'r for Complainants.

Appearance as ordered entered by the clerk.

65 *Order for App't of Com'r to Take Dep's'n of Stewart. Filed Nov.* 1, 1881.

In the Supreme Court of the District of Columbia. In Equity.

THOMAS SUNDERLAND and CURTIS J. HILLYER, Complainants,
versus
HALLET KILBOURN and JOHN F. OLMSTEAD, Defendants.
} No. 7764.

Now, on this day, comes J. H. Ralston, solicitor for the complainants in the above-entitled cause, and Enoch Totten, Esq., solicitor for the above-named defendants, and it appearing to this court that the above-named complainants have filed in the clerk's office of the supreme court of the District of Columbia, more than ten days prior to the date of this order, interrogatories to be propounded to one William M. Stewart, a non-resident witness, living in the city of San Francisco, State of California, and that the above-named defendants have also filed in the said clerk's office, prior to the making of this order, cross-interrogatories to be propounded to the said
66 Stewart, and it also appearing that one J. Holland Smith, of San Francisco, California, is a proper person to take the testimony of said William M. Stewart upon said interrogatories and

cross-interrogatories, therefore it is ordered by this court, this first day of November, 1881, that a commission issue out of the clerk's office of the supreme court of the District of Columbia in the above-entitled cause to J. Holland Smith, of San Francisco, California, directing and empowering him to take the testimony of said William M. Stewart upon the interrogatories and cross-interrogatories heretofore filed therein, and when so taken return the same to the clerk of this court.

By the court:

A. WYLIE.

I consent.

ENOCH TOTTEN,
For Def'ts.

Commission to Take Testimony.

67 In the Supreme Court of the District of Columbia, the 1st Day of November, 1881.

THOS. SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN and JOHN F. OLMSTEAD. } No. 7764, Eq. Doc. 12.

The President of the United States to J. Holland Smith, of San Francisco, California, Greeting:

Know you that, in confidence of your prudence and fidelity, you have been appointed, and by these presents you are invested with power and authority, to examine Wm. M. Stewart, San Francisco, California, as a witness for the complainants in the above-entitled cause, upon the interrogatories annexed to this commission; and therefore you are hereby commanded, at a certain day and place or certain days and places to be appointed by you, to cause said witness to come before you and then and there examine him, on oath
68 or affirmation, upon the said interrogatories, and reduce his testimony into writing, to be signed by said witness; and, having so done, annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

R. J. MEIGS, *Clerk*,
[SEAL.] By R. J. MEIGS, Jr. *Ass't Clerk.*

Interrogatories to be Propounded to Stewart. Filed Oct. 12th, 1881.

In the Supreme Court of the District of Columbia. In Equity.

THOMAS SUNDERLAND and C. J. HILLYER
vs.
HALLET KILBOURN and J. F. OLMSTEAD. } No. 7764.

Interrogatories to be proposed to William M. Stewart, a non-resident witness for the complainants in the above-entitled action.

Interrogatory 1. What is your name, age, place of residence, and occupation?

69 Int. 2. Where were you in the months of April, May, and June, A. D. 1872, and what was your occupation?

Int. 3. Were you during those months interested with these complainants in the purchase of real estate in the city of Washington? If yea, state how and to what extent you were interested, and, so far as you recollect, the parcels of property purchased and the general character of the same.

Int. 4. Were the negotiations or agreements for these purchases made by you and the complainants directly or through the agency of brokers, and, if the latter, state what brokers were employed.

Int. 5. If you say that the purchases were made through the agency of a firm of brokers styled Kilbourn & Latta, then state under what arrangement and upon what terms said brokers were employed and fully the relation existing between complainants
70 and yourself on the one side and said brokers on the other in relation to such purchases.

Int. 6. Did said brokers ever represent that the firm or either member of the same was the seller of any of the said property to yourself or complainants, or ever in any manner interested with the sellers in the sale thereof, or that said firm was in any case acting as the agents or brokers of said sellers in negotiating or bargaining for the sale thereof to yourself and complainants?

Int. 7. Did you ever know that said firm was interested as seller to yourself and complainants of any of said property? And, if so, state when and how you acquired this knowledge.

Int. 8. Did you ever have personally any communication or negotiation with the owners of any of the property purchased in reference to the purchase thereof, or did you negotiate for the purchases in any other manner than through the said firm of brokers?

71 Int. 9. What representations were made to complainants and yourself by said brokers respecting the purchase price paid for said property?

Int. 10. To what extent did the complainants and yourself rely upon the judgment and advice of the said firm of brokers in making the several purchases?

Int. 11. In whose name was the title of the property purchased taken and at whose suggestion, and for what reasons was it done?

Int. 12. When and to whom did you dispose of your interest in this property?

Int. 13. What was done with the property purchased intermediate the times of purchase and your sale to Sunderland?

Int. 14. Up to the time of your sale, December 21, 1872, did you know of any services rendered to complainants and yourself by the firm of Kilbourn & Latta for which they were entitled to compensation over and above their regular commissions as brokers?

72 Int. 15. During the time you were owner did you know of any agreement or understanding for compensation to said brokers, beyond regular commissions, for any services rendered or professed to be rendered in reference to said property by said firm

of brokers? State fully your knowledge and understanding in reference to the subject-matter of this question.

Int. 16. Have you any interest in the event of this action?

Int. 17. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answer.

73 *Cross-Interrogatories.*

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND *et al.*
vs.
HALLET KILBOURN *et al.*
} Equity No. 7764.

Cross-interrogatories to be propounded to William M. Stewart by the commissioner appointed by the court to propound the foregoing direct interrogatories.

Cross-interrogator*ies* 1. If, in answer to the fifth direct interrogatory, you say that the firm of Kilbourn & Latta were employed by you and your associates, please state with which particular member of the firm the alleged arrangement was made, the day upon which it was made, and the place where it was made. State, in addition to this, what persons were present at the time of the arrangement; state also, in this connection, the exact terms upon which you and your associates employed the firm of Kilbourn & Latta, if you say that they were so employed.

74 Cross-interrogatory 2. At the time the alleged arrangements were made with the firm of Kilbourn & Latta were you not personally aware that there was in existence an association called "The Real Estate Association," commonly known as "The Real Estate Pool," buying property in the northwestern part of the city of Washington, and that the firm of Kilbourn & Latta were interested in that real estate association to the extent of one-half?

Cross-interrogatory 3. Were you not also aware that at the time when you and your associates first spoke to the firm of Kilbourn & Latta they were engaged in the business of buying and selling real estate on their own account as well as for others, and that, in addition to their connection with the real estate association mentioned in the next preceding cross-interrogatory, they were also associated with another association, of which N. P. Chipman, Esq., was
75 the principal person, and that they were so interested to the extent of one-half of the profits or losses?

Cross-interrogatory 4. Were you not aware at the time the property was purchased by you and your associates in square one hundred and fifty-eight that the title to some or all of the lots in that square purchased by you had been in the defendant, John F. Olm-

stead, and that the property had been owned by him for more than a year?

Cross-interrogatory 5. Were you not also aware that the firm of Kilbourn & Latta had been in negotiation for square one hundred and fifteen for nearly two years prior to the purchase by you and your associates for that square, and did you not know that they had secured what is called among real estate men the "refusal" of that property at a given sum of money?

Cross-interrogatory 6. Did you and your associates always
76 go personally and examine the pieces of property prior to the purchase by you and pass your own judgment upon the advisability of making such purchase?

Cross-interrogatory 7. Have you received any communication from either of the complainants, Sunderland or Hillyer, touching the questions of fact involved in this controversy since the original bill herein was filed, to wit, on the ninth day of June, 1881? If you have, please annex the same to this your deposition.

ENOCH TOTTEN,
Att'ys for Def'ts.

Stipulation.

In the Supreme Court of the District of Columbia. In Equity.

THOS. SUNDERLAND and C. J. HILLYER
vs.
HALLET KILBOURN and J. F. OLMSTEAD. } No. 7764.

77 A commission to take the testimony of William M. Stewart, a witness resident in San Francisco, California, having heretofore erroniously issued out of the supreme court of the District of Columbia in the above-entitled cause to J. Holland Smith, of San Francisco, California, when Holland Smith was the person meant and intended, it is hereby stipulated and agreed between the attorneys herein that Holland Smith, of San Francisco, California, may proceed to take the testimony of said Stewart and act in the premises in all respects as if such commission to take testimony had issued to him directly instead of to J. Holland Smith.

Washington, D. C., Nov. 18, 1881.

ENOCH TOTTEN,
For Defendants.
HILLYER & RALSTON,
For Plaintiffs.

78 *Deposition of W. M. Stewart. Filed Dec. 5th*, 1881.

In the Supreme Court of the District of Columbia.

THOS. SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN and JOHN F. OLMSTEAD. } No. 7764, Equity Docket 21.

STATE OF CALIFORNIA,
City and County of San Francisco, } *ss:*

I hereby certify that on this twenty-eighth day of November, A.

D. one thousand eight hundred and eighty-one, before me, Holland Smith, a notary public in and for the city and county of San Francisco, State of California, and also a commissioner appointed by the honorable supreme court of the District of Columbia to take the testimony of Wm. M. Stewart on the interrogatories and cross-interrogatories hereunto annexed, at my office, No. 307 Montgomery street, Nevada Block, in the said city and county of San Francisco, between the hours of ten a. m. and four p. m., was produced
79 to and came before me the said Wm. H. Stewart, the witness named in the notice hereunto annexed, to depose in a civil cause depending in the said supreme court of the District of Columbia, wherein Thomas Sunderland and Curtis J. Hillyer are complainants and Hallet Kilbourn and John F. Olmstead are the respondents, and the said Wm. M. Stewart, being of lawful age and sound mind, and being by me first carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth touching his knowledge of the matters and things in controversy in said civil cause, deposed and said as follows—that is to say:

To the first interrogatory he says: My name is William M. Stewart; my age, fifty-four years; place of residence, San Francisco, California, and occupation, lawyer.

To the second interrogatory he says: I was in Washington city, District of Columbia, and my occupation was United States Senator from Nevada.

80 To the third interrogatory he says: I was during those months engaged in the purchase of real estate in the city of Washington with complainants. My interest in the enterprise was one-fourth. Mr. Sunderland's interest was one-half and Mr. Hillyer's one-fourth. I am unable to describe the property by lots and blocks, but there was a large amount of property in the northwest portion of the city, and the general character of it was unimproved and vacant lands.

To the fourth interrogatory he says: The purchases made by myself and associates were not made directly by us, but through the agency of a firm of brokers in Washington city under the name and style of Kilbourn & Latta.

To the fifth interrogatory he says: On consultation among ourselves—Messrs. Sunderland, Hillyer, and I—we came to the conclusion that Kilbourn & Latta should be employed to negotiate the purchases which we contemplated, and accordingly we
81 consulted with and employed them in the business. It was distinctly understood that they should negotiate for such pieces of property as we desired to purchase from time to time, and buy the same at the lowest possible *possible* price, and that they should have a commission on all purchases made by them, but that in case the venders should apply to them to sell that they would obtain a reduction from the purchase price of the commission, which the venders in such case would be liable to pay, and in that case it would be the same to us as if we paid no commission. This

arrangement was made in consideration of the extensive purchases we proposed to make.

To the sixth interrogatory he says: I never knew that the said firm or any member thereof was the seller of any property to myself or associates, or ever in any manner were interested with the sellers in the sale thereof, or that the said firm in any case were
82 acting as the agents or brokers of said sellers in negotiating or bargaining for the sale to myself or associates.

To the seventh interrogatory he says: I never knew that the said firm was interested as sellers to myself and complainants of any of said property.

To the eighth interrogatory he says: I never had personally any communication or negotiation with the owners of any property purchased, nor as to the purchase thereof, nor did I negotiate for the purchase in any other manner than through said firm of Kilbourn & Latta.

To the ninth interrogatory he says: That the said firm of Kilbourn & Latta represented to complainants and myself that they were purchasing the property in all cases at the lowest possible price.

To the tenth interrogatory he says: Myself and complainants relied solely upon the judgment and advice of the firm of Kil-
83 bourn and Latta in making the several purchases as to the purchase price. We examined the land to be purchased, and decided upon the prices of property we desired, and the balance of the business was all attended to by our brokers.

To the eleventh interrogatory he says: The title to the property purchased was taken in the name of James M. Latta at the suggestion of Kilbourn & Latta, and the reason given was that the land could be bought cheaper if it was not known who the purchasers were, and that it was much more convenient to make transfers on the resale of the land if it stood in the name of one person, thereby avoiding the necessity of obtaining the signatures of ourselves and wives in case of transfer, for the intention was to sell the land as soon as a reasonable advance in price could be obtained.

To the twelfth interrogatory he says: I disposed of my entire interest to Thomas Sunderland, one of the complainants, about
84 the month of December, 1872. He took all responsibilities and liabilities of the purchases, and refunded me *me* my money that I had advanced, and he was with the knowledge and consent of the firm of Kilbourn & Latta substituted in my place, and from that day I ceased to have any interest whatever in the transactions or business.

To the thirteenth interrogatory he says: There was nothing done with the property, to my knowledge, from the time of the purchase until my sale to Sunderland.

To the fourteenth interrogatory he says: I knew of no services rendered to the complainants or myself by the firm of Kilbourn & Latta for which they were entitled to compensation, over and above their regular commissions as brokers, during the time I was interested.

To the fifteenth interrogatory he says: I knew of no agreement or understanding between myself and my associates on the one side and Kilbourn and Latta on the other for any compensation
85 to them for services rendered or to be rendered with reference to said property by said firm of Kilbourn & Latta other than the regular commissions for the purchase of the same.

To the sixteenth interrogatory he says: I have no interest whatever in this action.

To the seventeenth interrogatory he says: I do not now know nor can I now set forth any other matter or thing which may be a benefit or advantage to the parties at issue in this case or either of them, or that may be material to the subject of my examination or the matter in question in this case.

Cross-Interrogatories.

To the first cross-interrogatory he says: The arrangement was made with both Mr. Kilbourn and Mr. Latta. I think they were both present when they agreed to undertake our business as brokers. I do not remember the day they were employed by us; it was
86 shortly before the first purchase was made. The contract with them was made in the office of Kilbourn & Latta, in the back room of that office, the usual place of consultation. I think Messrs. Kilbourn & Latta. Sunderland, Hillyer, and myself were present and no one else. The exact terms of the agreement were, as near as I can now recollect, that the firm of Kilbourn & Latta was to undertake to purchase such pieces of property as we might desire to purchase and charge a commission therefor in each case, but in cases where the vendors sought them, and in which case they were entitled to charge a commission as against the vendors, that the same should be deducted from the purchase price.

To the second cross-interrogatory he says: At the time the arrangement was made with the firm of Kilbourn & Latta I was not personally aware that there was in existence an association
87 called the "Real Estate Association," commonly known as "The Real Estate Pool," buying property in the northwestern part of the city of Washington, and that the firm of Kilbourn & Latta were interested in that real estate speculation to the extent of one-half, but I understood from Messrs. Kilbourn & Latta that they had already made several large purchases in the northwestern part of the city as brokers for other clients, but they did not disclose to me who their clients were or that they were personally interested in the purchase.

To the third cross-interrogatory he says: I may have heard them say that they had bought and sold real estate on their own account, but I had no knowledge of the particular real estate or with whom they were connected at that time nor until long after I had ceased to be interested with Messrs. Sunderland and Hillyer, and
88 knew nothing of their connection with any association of which W. P. Chipman was the principal person or that they were interested until long after I ceased to be interested with Sunderland & Hillyer.

To the fourth cross-interrogatory he says: My recollection is that one piece of property—I do not remember the number of the square—which we bought stood in the name of John F. Olmstead, but I was not aware that he was a member of the firm of Kilbourn & Latta at that time, nor was I aware of the fact that he was the owner of the property. So much of the property at that time was standing in the name of trustees that the fact that the property stood in the name of John F. Olmstead did not convey to my mind any certainty that he was the owner. I did not know that Kilbourn & Latta were in any way interested in the property standing in the name of Olmstead, but supposed in the purchase of that property they were acting
89 solely for myself and associates in obtaining the property at the lowest possible cash price.

To the fifth cross-interrogatory he says: I do not now recollect, but I may have understood at the time there had been previous negotiations for the property in question, but I did not understand that Kilbourn & Latta had what is termed a refusal of the property or any arrangement for the *purpose* of the same; but I understood at the time that they were negotiating with the original owners of the property and purchasing the same for us, as our brokers, at the lowest possible price.

To the sixth cross-interrogatory he says: Sunderland, Hillyer, and myself generally, if not always, examined the pieces of property which we desired to purchase prior to the purchase, and when we had done so advised our brokers we would like to purchase the same. The balance of the business was solely entrusted to them.

90 To the seventh cross-interrogatory he says: I have received no communication from either of the complainants, Sunderland nor Hillyer, touching the questions of fact involved in this controversy since the original bill was filed, to wit, on the 9th day of June, 1881.

WM. M. STEWART.

I do further certify that the foregoing deposition of Wm. M. Stewart was then and there reduced to writing by me and then carefully read over to the deponent and by him subscribed in my presence after having been so reduced to writing and read over to him, and that he subscribed his name not only to said deposition, but to each page of the same.

I do further certify that the reason for taking said deposition was and is and the fact was and is that the deponent lives at San Francisco, in the county of San Francisco, in the State of Cali-
91 fornia, which is more than one hundred miles from the city of Washington, in the said District of Columbia, where the said case is to be tried.

I do further certify that I propounded the interrogatories and cross-interrogatories to the witness in their order and reduced his answers to writing as nearly as practicable in his precise words; that neither the claimants nor respondents, their or either of their agents

or agents or attorney or attorneys nor any other person, *was* present at the taking of said deposition.

I do further certify that I am not directly or indirectly interested in said case, and that I am not nor have I been of counsel or attorney to either of the parties to this suit.

I do further certify that, it being impracticable for me to deliver said deposition with my own hand into the court for which it was taken, I have retained the same for the purpose of being sealed
92 up by me and speedily and safely transmitted by the United States mail to the said court for which it was taken and to remain under my seal entire until there opened.

That the fee for taking said deposition amounts to $25, and has been paid me by complainants; that said fee is just and reasonable for the service.

In witness whereof I have hereunto set my hand and affixed my official seal, at the said city and county, this 28th day of November, A. D. 1881.

[SEAL.] HOLLAND SMITH,
Commissioner.

93 *Order for Production of Books and Papers. Filed Feb. 9, 1882.*

In the Supreme Court of the District of Columbia. In Equity.

THOMAS SUNDERLAND and C. J. HILLYER
vs.
HALLET KILBOURN and J. F. OLMSTEAD. } No. 7764.

Now, on this 6th day of February, 1882, after hearing the arguments of counsel, both *pro* and *con*, upon the motion of complainants' solicitors that John F. Olmstead be required to produce for the examination and inspection of complainants and their solicitors before the examiner herein certain books and papers and to answer certain questions, it is ordered that the said John F. Olmstead produce to the examiner herein for the inspection of complainants and their solicitors a certain letter written by James M. Latta, from Altoona, Pennsylvania, and dated May 20, 1872, and being the same which said Olmstead has heretofore refused to produce; and it is further
94 ordered that the said John F. Olmstead produce to the examiner herein, for the inspection of complainants and their solicitors, a certain book of original entry known as a journal, and being the same book containing an account of the transactions of the firm of Kilbourn & Latta for the months of May and June, 1872, so that the complainants herein may make extracts of such entries therein as may be pertinent to any of the issues in this case: Provided, That this inspection shall take place in the presence of defendants' solicitor and the examiner, and shall be so far under his direction as to prevent any further examination of said book than may be proper for the purposes above mentioned; and it is further ordered that the said Olmstead shall answer all such questions as may be put to him touching the purchase by the firm of Kil-

bourn & Latta or the acquisition by that firm of any in-
95 terest in any of the property bought by Sunderland, Hillyer and Stewart in the year 1872, and shall also produce to the examiner, for the inspection of the complainants and their solicitors, all books and papers in his possession or under his control containing entries or statements in relation to such purchases.

By the court:

A. WYLIE.

Order to Close Testimony in 45 Days. Filed Feb. 10, 1882.

Supreme Court of the District of Columbia.

THOMAS SUNDERLAND *et al.*
vs.
HALLET KILBOURN *et al.* } Eq. 7764.

This cause having come on to be heard on the motion of complainant to have the time for taking testimony limited, and counsel having been heard, it is this 10th day of February, 1882, ordered, upon agreement of counsel, that the defendants be, and they
96 hereby are, allowed thirty (30) days within which to close their testimony, and that then the complainants have fifteen days within which to take testimony in rebuttal.

A. B. HAGNER,
Asso. Justice.

Order Allowing Amendment to Bill. Filed Mar. 14, 1882.

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND and HILLYER
vs.
KILBOURN and OLMSTEAD. } No. 7764.

Order amending bill, &c.

Now, on this 14th day of March, 1882, came the complainants, by Hillyer & Ralston, their solicitors, and the defendants, by Enoch Totten, Esq., their solicitor, and by consent it is—

Ordered, That the complainants have leave to withdraw their replication heretofore filed in this cause, and to amend their bill of complaint by inserting therein, immediately after paragraph
97 11, the words comprehended in the offer of amendment this day filed in the cause.

And that the defendants have thirty days from the date of this order within which to file an amended answer herein as to the new grounds of complaint specified in the amendments herein allowed, and that this order shall be without prejudice to the use of any evidence heretofore taken in this cause.

The question whether the complainants should be charged with all the costs accrued in this cause up to the time of this order because of the amendment applied for and now allowed is reserved for the future order of the court.

March 14th, 1882.

A. B. HAGNER, *Asso. Justice.*

98 *Stipulation to Amend Bill. Filed Mar.* 22, 1882.

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND and HILLYER *vs.* KILBOURN and OLMSTEAD. } No. 7764.

In the United States Circuit Court within and for the District and State of Indiana.

SUNDERLAND and HILLYER *vs.* LATTA. } In Equity.

THOMAS SUNDERLAND *vs.* JAMES M. LATTA. } In Equity.

Whereas Thomas Sunderland and C. J. Hillyer, as complainants, have filed their bill in equity against Hallet Kilbourn and John F. Olmstead, as partners in the late firm of Kilbourn and Latta, in the supreme court of the District of Columbia, entitled and num-
99 bered as above, and have also filed their bill in equity in the circuit court of the United States for the district of Indiana against James M. Latta, as a partner of the said firm of Kilbourn and Latta, and the said Sunderland has also filed his bill in equity in the said circuit court against the said James M. Latta; and whereas the bill of Sunderland and Hillyer against Latta sets forth the same cause of action substantially as that set forth in case of the same complainants against Kilbourn and Olmstead, together with certain other matters immediately connected therewith, and the bill in the said suit of Sunderland against Latta seeks to charge said Latta on account of matters growing out of the transactions of said firm and closely related to the causes of action set forth in the first above named suit; and whereas a large amount of testimony has been taken in the said several cases by depositions, some of which are not yet completed:

100 Now, therefore, for the purpose of consolidating the said actions, it is stipulated between the complainants and the defendants herein, as follows:

First. In the said suit pending in the supreme court of the District of Columbia the complainants may, within ten days from the date of this stipulation, file either an amendment to the present bill

or a supplemental bill (making the said James M. Latta a defendant therein) embracing all or any of the allegations not contained in the present bill which are contained in either of the bills above-mentioned, pending in the circuit court U. S. for Indiana, together with a prayer for appropriate relief, as well in favor of said Sunderland individually as of said complainants Sunderland and Hillyer, and as well against the defendant Latta individually as against the defendants Kilbourn, Olmstead, and Latta jointly,
101 the said amendment or supplemental bill, when filed and without engrossment, to constitute a part of the bill of complaint therein, and no objection for multifariousness shall be made thereto on account of any of the allegations contained therein, in accordance with the above stipulation.

Second. Within 30 days after filing by complainants of such amendment or supplemental bill and service of copy thereof on def'ts' solicitors *or* the said James M. Latta shall enter his appearance in the said cause, and shall have the privilege within said period of filing as his answer to the said bill the answer filed by him in the said circuit court for Indiana, with such supplements as may be necessary to meet the amendment or supplement so filed by complainants, or to file a new answer, as he may deem advisable, and within the said period the said Kilbourn and Olmstead
102 shall have the right to amend their answer or file a supplemental answer in said cause, as they may be advised.

Third. Evidence may be taken upon all the issues raised by the pleadings as amended, but only to affect the party or parties and the issue or issues in respect to which it is competent and relevant, and upon a final hearing all of said issues may be passed upon by the court and such judgment rendered for or against all or either of the parties as the law and evidence shall warrant.

Fourth. The evidence heretofore taken in either of the above-entitled actions shall be deemed and considered as evidence taken in the said cause pending in the supreme court of the District of Columbia, and may be used therein by either under the amended pleadings in the same manner as if the same had been taken therein in due form before an examiner of the said supreme court
103 subsequent to the making of said amendments to the pleadings. Depositions hereafter taken in the said cause within the District of Columbia shall be taken before an examiner of the said supreme court, and when within said District in either of the said causes the taking of the depositions of any witness before a duly appointed officer of either of said courts or under agreement, verbal or written, between the parties, before W. T. S. Curtis, a notary public, has been commenced, but has not yet been completed, the taking of the same shall be continued and completed before a regularly appointed examiner, and the portion of the same already taken shall for all purposes be considered and treated as having been taken before such examiner of said supreme court.

Fifth. The amendment of pleadings above stipulated for shall not operate to delay the taking of testimony by either party.
104 Such additional testimony-in-chief as shall be required by

reason of the amendments to the complaint shall be completed within twenty days from the date of this stipulation and the testimony of defendants within twenty-five days from joinder of issue and of complainants in rebuttal within fifteen days after the close of testimony for the defendants, these periods not to be enlarged except by consent or by an order of court made after notice to the opposite party and upon good cause being shown.

Sixth. Upon appearance and filing of answer by J. M. Latta in the action pending in the supreme court of the District of Columbia the cases of Sunderland and Hillyer against Latta and Sunderland against Latta in the circuit court of Indiana shall be dismissed, the dismissal to be in form without costs, but the costs already
105 accrued in either of the said actions last named shall abide the event of the action in the District of Columbia, and shall be taxed therein for or against either party as if incurred in said last-named cause.

Such allegations or statement of causes of action embraced in said causes pending in said circuit court as may under this stipulation be set forth by complainants in the amendment to bill or supplemental bill above provided for shall, as to any defense thereto by defendant, James M. Latta, based upon the statute of limitations or the laches of complainants, be regarded as having been made as of the date of the filing of the original bills in the said State of Indiana. As to any matter not embraced in the Indiana cases which may be alleged in the amended or supplemental bill, the stipulation last above shall not apply, it being only intended by said stipulation to preserve the status of both parties acquired in said Indiana
106 cases as to the statute of limitations touching the matters and things therein pleaded; but the latter part of this stipulation beginning with the words "such allegations or statement" and including all the stipulation following them is to operate as to J. M. Latta and not as to Kilbourn and Olmstead or either of them.

March 22d, 1882.

THOMAS SUNDERLAND,
C. J. HILLYER,
By J. H. RALSTON, *Their Solicitor.*
JAMES M. LATTA,
By SHELLABARGER & WILSON.
ENOCH TOTTEN,
For Kilbourn & Olmstead.

107 *Amended Bill of Complaint. Filed Mar.* 22, 1882. *R. J. Meigs, Clerk.*

Supreme Court, District of Columbia. In Equity.

THOMAS SUNDERLAND and CURTIS J. HILLYER, Plaintiffs,

—

HALLET KILBOURN, JAMES M. LATTA, and JOHN F. OLMSTEAD, Defendants.

Amended bill of complaint.

1st. The plaintiffs state as follows:

The plaintiff, Thomas Sunderland, is a citizen of the State of California, and the plaintiff, Curtis J. Hillyer, is a citizen of the State of Nevada, and they bring this suit in their own right.

2d. The defendants, Kilbourn and Olmstead, are citizens of the District of Columbia, and the defendant Latta is a citizen of the State of Indiana.

3rd. That in the month of April, A. D. 1872, the plaintiffs and one William M. Stewart formed on enterprise and associated themselves together for the purchase, by way of speculation and investment, of a considerable quantity of unimproved real estate situate in the northwest quarter of the city of Washington, in the District of Columbia, under a mutual arrangement and agreement between them, whereby the said Sunderland should have one-half in-

108 terest and the said Hillyer and the said Stewart each one-quarter interest in such purchases; that for the purpose of making the proposed purchases in a manner the most advantageous to their interests the plaintiffs and said Stewart, in said month of April, 1872, engaged and employed as their agents a certain firm of real estate brokers then doing business as partners in said city of Washington under the firm name and style of Kilbourn and Latta, and composed of the defendants, Kilbourn, Olmstead, and Latta, and it was then and there agreed between the said firm on the one part and the plaintiffs and the said Stewart on the other part as follows:

That the plaintiffs and the said Stewart should entrust unto said firm as their agents aforesaid the negotiation for and the purchase of such real estate in the said quarter of the city as the plaintiffs and the said Stewart might elect to acquire; that they should furnish unto the said firm, when by the same thereunto required, such sums of money as might be requisite for the acquisition of the property, and that the plaintiffs and the said Stewart should pay unto the said firm upon the purchases to be made by said firm on their account a reasonable compensation by way of commission when and in case the said firm should make no charge by way of commission against the vendors of the property, but in case any such charge should be made by the said firm against the vendors

109 that then the plaintiffs and the said Stewart should pay unto the said firm no commission whatever; that the said firm, in

consideration of so being entrusted with the purchase of such real estate and of the commissions which it might derive upon such purchase, should ascertain and point out unto the plaintiffs and the said Stewart such lots and parcels of land in the said section of the said city as, in the judgment of the said firm, might be most advantageously acquired by the plaintiffs and the said Stewart; that the said firm should advise and counsel, to the best of its judgment, knowledge, and experience, the plaintiffs and the said Stewart in respect of the purchase of any particular parcel of land within the said section which they, on their own motion, might suggest to the said firm as desirable to be purchased on their account, and that in any and all cases the said firm should negotiate for the purchase of any real property to be acquired on account of the plaintiffs and the said Stewart at the lowest possible rate at which it could be obtained from the owner, and after ascertaining the price at which any such property might be obtained from the owner should fairly and to the best of the knowledge and ability of the said firm inform the plaintiffs and the said Stewart whether the said price was
110 such as to render their acquisition of the property desirable, and recommend to them whether they should purchase the property or not; that if the plaintiffs and the said Stewart consented to such purchase the same should be made on their account by the said firm, and that, upon receiving at its request from the purchasers the cash required in the first instance, and also the amount of deferred payments as the same might become payable, the said firm should make due settlement with the vendor or other person entitled to payment.

4th. That in pursuance of said enterprise and the said agreements, in the months of May, June, and July, 1872, the said firm of brokers negotiated for and purchased on account of the plaintiffs and the said Stewart a number of unimproved lots and parcels of land in the northwest quarter of said city, the purchase price of which amounted to about $370,000, and during said period the plaintiffs and the said Stewart placed in the hands of said brokers over $100,000 in money to meet the cash payments which the said firm represented unto the complainants and the said Stewart as necessary to be made in order to the completion of said purchases; that in respect to each of the said purchases, before the same was
111 finally concluded, the said firm announced to the plaintiffs and the said Stewart the price they were required to pay for the property and thereupon obtained their consent to the payment of such price, but in each case the said firm represented at the same time to the plaintiffs and the said Stewart that the said firm had faithfully and diligently negotiated with the owner of the property to obtain the same at the lowest price, and that the price by the said firm so announced to the plaintiffs and the said Stewart was the lowest price for which the property could be at all obtained, and the plaintiffs and the said Stewart in consenting to such price as aforesaid relied entirely upon the truth of the said representations made by the said firm and upon the good faith and judgment of said firm in recommending the purchase.

5th. That in the latter part of April or early in May, 1872, the plaintiffs and said Stewart called the attention of said firm of brokers to square numbered 115, in said city, and requested the said firm to ascertain the owner thereof and the price at which the said square could be purchased, and that on or shortly before the 25th day of said month of May the said firm informed the plaintiffs that the said firm had been in negotiations for the purchase of the
112 said square from the owner thereof, and represented to the plaintiffs and the said Stewart that the sum of $65,000 was the lowest price at which the said square could be obtained from the owner thereof, and advised the plaintiffs and the said Stewart that the purchase of the said square at such price would be a desirable and advantageous one; that, relying upon these representations, the plaintiffs and said Stewart authorized the purchase of said square by the said firm, on their account, at the price aforesaid, and upon the further representations by the said firm that it was required by the seller that $20,000 of the purchase price should be paid in cash the plaintiffs and the said Stewart paid to said firm the said sum of $20,000 as such cash payment; that upon the 25th day of May, in the same year, the then owner of said square executed his certain deed conveying the said square unto the said James M. Latta, as trustee for the plaintiffs and said Stewart, and the said Latta accepted the said conveyance in trust for them, and they thereupon became the owners of the said square.

But the plaintiffs aver that the statements and representations made by the said firm in respect to the purchase of the said square were false and fraudulent; that the actual purchase price
113 paid and at which the said square was obtainable and obtained from the owner thereof by the said firm was not $65,000, but only $40,000, and the cash required by the owner of the said square and in fact payable and paid on the purchase thereof by the said firm was not $20,000, but only $8,000, and that the said firm, fraudulently and for the purpose of cheating the plaintiffs and the said Stewart, charged and induced them to pay to the said firm, as the purchase price of said property, twenty-five thousand dollars ($25,000) more than was paid or was necessary to be paid by the said firm to the vendor of the said square; which said sum of $25,000 the said firm appropriated at the time to their own use and have since retained.

The plaintiffs further aver that neither they nor the said Stewart nor any nor either of them took any part in the negotiations concerning the purchase of said square nor had any communication with the owner thereof, but left the said purchase entirely to the said firm of brokers, whose duty it was and who promised and agreed with the plaintiffs and said Stewart to conduct and conclude the said purchase wholly in their interest and for their benefit.

Plaintiffs further aver that the real facts concerning said
114 negotiations and the actual price paid for the said square of ground by the said firm was never disclosed by said firm or any member thereof to, but, on the contrary, was fraudulently concealed from, the said plaintiffs and said Stewart in such manner that

they and each of them were at the time and until the year 1881 remained entirely ignorant thereof; that, relying upon the honesty and good faith of their said agents, the plaintiffs and said Stewart made no inquiry or investigation in reference to the said transaction and had no knowledge or suspicion of the facts constituting the fraud therein until about the month of March, 1881, at which time the plaintiff Sunderland, having his suspicions aroused by certain other transactions and dealings with the members of said firm, examined the record of the conveyance of said square unto said Latta as trustee (the original of which said conveyance and of all other conveyances made to said Latta, as trustee for the plaintiffs and said Stewart, had and have since the execution and record thereof been in the exclusive possession of the defendants and said Latta, and had and have never been seen by either of the plaintiffs or said Stewart) and, finding the purchase price therein stated to be $40,000,
115 made inquiries of parties having knowledge of the facts and from them learned and for the first time became aware that the sum of $40,000 was the real consideration paid by the said firm for the said square, and thus discovered the fraud which had been perpetrated by the said firm upon the plaintiffs and the said Stewart.

6th. That in the early part of the month of May, 1872, the plaintiffs and said Stewart had under consideration the desirability of purchasing lot numbered 17, in square numbered 158, in said city, and requested the said firm, as their agents, to make inquiries respecting the said lot and ascertain the lowest price at which it could be purchased on their account; that subsequently and shortly before the 23d day of May, 1872, the said firm informed the plaintiffs and the said Stewart that the said firm had been in negotiation with the owner of said lot and had ascertained that the same could be purchased for the sum of $8,316, and that this was the lowest price for which the said lot could be purchased from the owner thereof, and the said firm at the same time advised the plaintiffs and the said Stewart to purchase the said lot at said price; that the plaintiffs and said Stewart, relying upon the truth of the representations so made by the said firm, authorized the said firm to pur-
116 chase the said lot on their account at the price last above named; that on the 23d day of May, 1872, the said firm so in fact purchased the said lot and informed the plaintiffs and said Stewart that a deed in due form had been executed for the said lot by the owner thereof to James M. Latta, as trustee for the plaintiffs and the said Stewart, and the said firm thereupon charged the plaintiffs and said Stewart with the amount last above stated as the purchase price thereof, and from funds in the hands of said firm belonging to the plaintiff and said Stewart appropriated under color of said purchase the sum of $4,316 and represented to the plaintiffs and said Stewart that the said sum was required by the vendor of the property as the real cash payment to complete the purchase, leaving the property encumbered in the sum of $4,000, which encumbrance was afterwards paid and discharged by the plaintiffs; but the plaintiffs aver that the representations so made

by the said firm in respect to the price of the said lot were false and fraudulent; that the actual purchase price paid and at which said lot was obtainable and obtained by the said firm was not $8,316 but only $5,000, and that said firm, fraudulently and for the purpose of cheating the plaintiffs and the said Stewart, charged and in-
117 duced them to pay to the said firm as part of the purchase price of said property $3,316 more than was paid or payable by the said firm to the vendor of the said lot, which said sum of $3,316 the said firm appropriated at the time to its own use and have ever since retained.

The plaintiffs further aver that neither they nor either of them nor the said Stewart took any part in the negotiations concerning the purchase of the said lot, but left such negotiation and purchase entirely to the said firm of brokers, whose duty it was and who promised and agreed with the plaintiffs and said Stewart to conduct and conclude the said negotiation and purchase wholly in their interest and for their benefit.

And the plaintiffs further aver that the real facts concerning said negotiations and the actual price paid for the said lot by said firm were never disclosed by the said firm or any member thereof to, but, on the contrary, were fraudulently concealed from, the plaintiffs and said Stewart in such manner that they and each of them were at the time and until the year 1881 remained wholly ignorant thereof; that, relying upon the honesty and good faith of the said firm, the said plaintiffs and said Stewart made no inquiry or investigation
118 in reference to the said transaction, and had no knowledge or suspicion of the facts as aforesaid constituting the fraud therein until about the month of March, 1881, when the said facts were discovered by the plaintiff Sunderland at or about the same time and through inquiries of the same character, and induced by the same causes as those stated in the preceding paragraph of this bill in reference to square numbered 115.

7th. The plaintiffs further aver that upon the same inducements and under the same promises, undertakings, and agreements and in substantially the same manner as hereinbefore stated in the fifth paragraph of this bill in respect to square numbered 115 the said firm, in June, 1872, negotiated and on the 7th day of said month purchased for the plaintiffs and said Stewart square numbered 155, in said city, and then and there represented to them that the lowest price at which said square numbered 155 could be obtained for them from the owner thereof by the said firm was $72,970.30, and at such price advised the plaintiffs and the said Stewart to acquire such square, to which they, in full reliance upon the integrity and good faith of said firm, accordingly consented, and thereupon the said price was by said firm charged for said square to and sub-
119 sequently paid by the plaintiffs and said Stewart, whereas in fact the actual purchase price paid and payable for said square numbered 155 by said firm was only $67,650.75, and the balance of $5,319.55 was fraudulently taken and appropriated by the said firm to its own use and the fact thereof by said firm fraudulently concealed from the plaintiffs and the said Stewart and never discovered

by plaintiffs or by the said Stewart until by the means and in the manner and at or about the same time hereinbefore stated in reference to square numbered 115.

And the plaintiffs further aver that between the months of May & July, 1872, both inclusive, the said firm purchased for and on account of the plaintiffs and the said Stewart, as their agents aforesaid, the following other real estate in the said city, known and designated on the ground plat or plan thereof as lot numbered eight (8), the west half of lot numbered nine (9), and lot numbered ten (10), all in square numbered one hundred and fifty-eight (158); and at and before the times of said several purchases the said firm represented unto the plaintiffs and the said Stewart that the said firm had negotiated with the several owners of the said lots respecting the purchase thereof, and had ascertained and that the
120 truth was that the lowest price at which the said lots could be obtained for them from the said owners by the said firm was, in the aggregate, the sum of $12,289.50, and the said firm then and there further represented unto the plaintiffs and the said Stewart and advised them that it would be to their interest and advantage to purchase the said lots at the aggregate price aforesaid; and the plaintiffs and the said Stewart, confiding in the honesty and good faith of the said firm and in the truth of the said representations, consented to the purchase by the said firm, on their account, of the said lots at the price aforesaid, and the said firm thereupon purchased the said lots for the plaintiffs and the said Stewart and charged them on account thereof the sum of $12,289.50, which was accordingly paid by the plaintiffs and the said Stewart; but the plaintiffs, upon information and belief, (a)ver that the said representations and advice so made and given to the plaintiffs and the said Stewart were falsely and fraudulently made and given and were conceived and contrived for the purpose of cheating the plaintiffs and the said Stewart, and that the lowest price at which the said lots were in fact obtainable and obtained from the owners thereof by
121 the said firm was not, in the aggregate, the sum of $12,289.50, but only the sum of $9,625.80, and that the latter was the real and actual price and consideration upon which the said firm so purchased the said lots for the plaintiffs and the said Stewart, and the difference between the said two sums, being the sum of $2,663.70, was fraudulently charged against and taken from the complainants and the said Stewart by the said firm.

And the plaintiffs aver that neither they nor either of them nor the said Stewart had at the time any reason to suspect or imagine the fraud thus perpetrated upon them; that it was deliberately concealed from them and each of them by the said firm, and that the plaintiffs never became aware of the said fraud or any of the facts constituting the same until the month of May, 1881, when the plaintiffs, being about to institute the present proceeding, examined the record of a certain case then depending in the supreme court of the said District of Columbia, entitled Kilbourn *et al. vs.* Latta, and numbered in equity No. 5919, and from the contents thereof were

for the first time made acquainted with the said fraud and the facts constituting the same.

And the plaintiffs aver that the plaintiff Hillyer for about
122 one-half and the plaintiff Sunderland for nearly all of the time which elapsed between the years 1872 and 1876 and from the latter date until the present year were absent from the District of Columbia, being either in Europe or upon the Pacific coast.

8th. The plaintiffs further aver that about the time the first purchases were made by the said firm on account of the plaintiffs and the said Stewart, as above set forth, it was suggested and recommended by the said firm that for the purpose of making more advantageously the proposed purchases, and also for the greater convenience of making conveyance of such portions of purchased property as might be resold, the title to all lots and real estate purchased or to be purchased by said firm on account of the plaintiffs and the said Stewart should be taken in the name of one of the members of the said firm as trustee for the plaintiffs and said Stewart, and that accordingly the title to all said purchased property was, through the procurement of said firm, conveyed to James M. Latta as such trustee; and said Latta received and took into his possession all of the deeds and muniments of title to said property, and has ever since retained the same, nor have the same or any part of them at
123 any time been in the possession of or exhibited to or seen by either the plaintiffs or the said Stewart.

And some time in the month of March of the present year the complainants, through the said Sunderland and under the circumstances set forth in the 5th paragraph of this bill in respect of their discovery of the fraud perpetrated upon them by the said firm in regard to the purchase of square numbered 115, for the first time ascertained or had reason to suspect and the truth was that the said firm, in order more fully to conceal their fraudulent acts and doings against the plaintiffs and the said Stewart, had caused the said deeds made to the said Latta, as trustee for the complainants and the said Stewart, to be for the most part withheld from record for an unreasonable period and not to be recorded until several months after the execution thereof.

9th. Plaintiffs further aver that in the month of May, 1882, the plaintiffs and said Stewart had under consideration the desirability of purchasing the whole of square 156, in said city, and requested the said firm, as their agents under their employment, as hereinbefore stated, to make inquiries respecting the said square, ne-
124 gotiate for the purchase thereof, and ascertain the lowest price at which it could be purchased on their account; that subsequently and shortly before the 27th day of May, 1872, the said firm informed the plaintiffs and said Stewart that said firm had been in negotiation with the owner or owners of said square, and had on their part diligently conducted the same in the interest of the complainants and said Stewart, with a view to procure the same for them at the lowest possible price, and had ascertained that the same could be purchased for the sum of $90,429.91, and that this was the lowest

price for which the said square could be purchased from the owner or owners thereof, and the said firm at the same time advised the plaintiffs and the said Stewart to purchase the square at the said price; and the plaintiffs and said Stewart, not having been informed by the said firm and not knowing who in fact was the owner or were the owners of the same and without any inquiry or reference thereto, but relying upon the truth of the representations so made by the said firm and upon their advice, authorized the said firm to purchase the said square on account of complainants and said Stewart at the price last above named, and that on the 27th day of May, 1872, the said firm informed the plaintiffs and said Stewart
125 that the purchase had been concluded, and that a deed in due form had been executed for the said square by the owner or owners thereof to James M. Latta, as trustee for the plaintiffs and the said Stewart; and the said firm thereupon charged the said plaintiffs and the said Stewart with the amount last above stated as the purchase price thereof, and from funds in the hands of said firm belonging to the plaintiffs and the said Stewart withdrew, under color of said purchase, the sum of $20,000, and represented to the plaintiffs and said Stewart that the said sum was required by the vendor of the property as a cash payment upon the purchase, leaving the property encumbered in the sum of $70,429.90, which incumbrance was afterwards fully paid and discharged by the said plaintiffs.

But the plaintiffs aver, as they are now informed and believe, that the representations so made by the said firm in respect to the price of the said square were false and fraudulent; that at the time of said pretended negotiations and of said purchases the title to the said square stood in the name of Hallet Kilbourn, trustee, and was held in trust by him for a certain company, composed of several individuals and called the "Real Estate Association," in which neither
126 the said Kilbourn, trustee, nor the firm of Kilbourn & Latta nor any member thereof had any actual or beneficial interest; that the said firm did not in fact negotiate with the said "Real Estate Association" nor with any of the individuals composing the same with reference to the sale of the said square to the said plaintiffs and said Stewart, nor, as plaintiffs are informed and believe, did the said firm communicate to the said "Real Estate Association" nor to any member thereof the fact that negotiations for the purchase of the same were pending, nor until some time after the conclusion of the sale the fact that the sale and conveyance to plaintiffs and said Stewart had been made, nor did they ever communicate to said association or to any member thereof the actual price which had been paid for the same by the plaintiffs and said Stewart, but, on the contrary induced the members of the said association to believe that the said square had been sold and conveyed by said Hallet Kilbourn, trustee, for the sum of $65,748, and that neither the said firm nor the said Kilbourn as trustee ever in fact accounted to the "Real Estate Association" or to any members thereof for any other sum as the sale price of said property than that of $65,748 last above named, and that neither the said association nor any members thereof ever
127 demanded, claimed, or received any other than the said sum

on account of the said sale, and that the difference between said sum and the amount paid, as above stated, by the complainants and said Stewart, to wit, $24,681.90, unbeknown to the complainants and said Stewart, was appropriated and retained by the said firm of Kilbourn and Latta for its own benefit; and complainants aver that by reason of the premises the defendants became and are chargeable in equity as trustees for the complainants with the excess of the purchase price actually paid to the said firm by the complainants and said Stewart, less reasonable commission, over the amount obtained by the said "Real Estate Association" on the sale thereof, to wit, $22,973.

Complainants further aver that until the month of January, 1882, they nor either — them had any knowledge that the sum of $90,429.90 above named was not the actual price for which the said square had been sold to the complainants and the said Stewart in 1872 by the then owners thereof through the said firm of Kilbourn & Latta, nor did they or either of them know any of the facts constituting the fraud in the said purchase, as above set forth;
128 that the said facts were up to the said date carefully concealed from the said complainants and the said Stewart and from each of them by the members of the firm of Kilbourn & Latta in such manner that the complainants had no knowledge of them and could not with any reasonable degree of diligence have ascertained them; that the said facts were ascertained first in the months of January and February, 1882, by an inspection of the books of the said firm of Kilbourn and Latta, obtained through an order of court, and by the statements of J. F. Olmstead, one of the members of said firm, when under examination as a witness in reference to the same.

10th. The plaintiffs further aver that in the month of December, 1872, the said William M. Stewart, being desirous of abandoning the said speculation and of freeing himself from all interest in the purchases which had been made thereunder and all obligations in respect to the same, assigned and conveyed in writing the entire interest of him, the said Stewart, in all of the property previously purchased by the complainants and himself as aforesaid unto the said Sunderland, it being at the same time agreed between the said Stewart and the said Sunderland, with the consent of the said Hillyer, that the said Sunderland should refund unto
129 the said Stewart the moneys theretofore advanced by him on account of said purchases, and should assume his, the said Stewart's, share of all liabilities in respect to deferred payments thereon and of every character whatsoever and it was further agreed as aforesaid that the said Sunderland should be substituted in respect to the interest of said Stewart as the original purchaser, with the same rights and obligations in every regard as if said Stewart had never been interested in the purchased property; that this agreement was fully known and at the time thereof fully assented to by the said firm, and the said firm agreed that the said Sunderland should as to themselves be substituted to all the rights and obligations of said Stewart in respect to said purchases and property in the

same manner and with the same effect as if he, the said Sunderland, had been the original purchaser and the said Stewart had had no interest therein. Thereafter the said Stewart had no interest in any portion of said property and no connection with any of the dealings relating to the same.

11th. The plaintiffs further aver that after the completion of the purchases hereinbefore mentioned all of the property so pur-
130 chased as aforesaid, together with two other parcels of unimproved real estate situated in the same quarter of the city and owned jointly by the plaintiffs, and of which the purchase price paid by them amounted to about $80,000, were left in the hands of said brokers for resale upon commissions whenever a satisfactory price therefor could be obtained; and in consideration of the probable prospective commissions to be derived by said firm from such resale the said firm agreed with the plaintiffs that it would keep in its own books an account of said property and ascertain and notify the plaintiffs of all payments necessary to be made by them on account of interest, deferred principal, and general and special taxes, and upon receiving the funds therefor from the plaintiffs disburse said funds as might be requisite and proper and keep an account of all such receipts and disbursements without any charge to plaintiffs for said services except for the actual expenses advanced by said firm; that this arrangement was in fact and was considered equally by the plaintiffs and the said firm to be highly advantageous to said firm, as both the said firm and the plaintiffs believed that within a short period very considerable sales of said property would
131 and could be made at satisfactory prices.

The plaintiffs aver, however, that owing to the financial crisis and general business depression commencing in 1873 and continuing for several years thereafter no sales were in fact made of any portion of said property prior to January 1st, 1877.

12th. Plaintiffs further aver that after the making of said arrangement, for several years together and prior to January 1st, 1877, the plaintiffs from time to time remitted large sums of money to said firm, aggregating more than $250,000, to be by said firm employed and expended in making payments on account of said property, and that on the 31st day of December, 1876, there was in the hands of said firm from such remittances a large sum of money, to wit, not less than $20,000, belonging to the plaintiffs and held by said firm for the purposes aforesaid; that on or about December 31st, 1876, the said firm secretly and fraudulently diverted from the funds of the plaintiffs then in the hands of said firm the sum of $16,526, and appropriated the same to their own use, and have ever since wrongfully retained the same.

132 Plaintiffs further aver, upon information and belief, that the only pretext for the misappropriation and conversion of said sum of money from the funds of the plaintiffs was that on or about the 31st day of December, 1876, the said firm caused an entry to be made upon their books of a debit charge against the plaintiffs for the care and management of their property from June, 1872, to the date of the entry of the said charge of $16,526, and then pre-

tended that the amount so taken by them was in satisfaction of the claim stated in said entry; but the plaintiffs aver that in fact neither the said firm nor any member thereof had exercised any care or management over any part of plaintiff's property otherwise than in the manner and under the arrangements and agreements above stated, and that nothing was in fact due to the said firm therefor, and that this the said firm and the several members thereof at the time well knew.

Plaintiffs further say that neither of the defendants ever disclosed to the plaintiffs or either of them that said funds had been so taken by said firm, or that said entry or charge had been made upon
133 the firm books, or that the said firm had or pretended to have any claim whatsoever against the plaintiffs for the care and management of their property or otherwise; but, on the contrary, the said firm and each of the members thereof carefully concealed from the plaintiffs all of said facts until the latter part of June, 1878, up to which time each of the plaintiffs was entirely ignorant of the said entry, charge, & claim; that between the 26th day of June, 1872, and the 20th day of June, 1878, no account had been by said firm rendered to the plaintiffs or either of them nor any communication, written or oral, made to them or either of them by said firm from which the plaintiffs or either of them could infer or suspect that said funds or any portion of the same were to be or had been taken by the said firm, or that any claim or charge of the character stated in said entry upon the books of the said firm had been or was intended to be made, but that on or shortly after the 20th day of June, 1878, the plaintiffs, then, for the first time in many years, being together in Washington, demanded from the said firm of Kilbourn & Latta a general account current, which was
134 furnished to them by the defendants, and that in said account they for the first time discovered that said entry had been made in the books of said firm and the amount last above stated had been abstracted from the funds of plaintiffs and wrongfully appropriated by the said firm; that they thereupon protested to the defendants against the said transaction and demanded of them either to refund the said amount at once to the plaintiffs or to apply it in discharging the indebtedness of plaintiffs upon their said property in accordance with the trust upon which it had been placed in their hands, stating to said defendants that unless this was done they, the plaintiffs, would institute legal proceedings for its restitution, but that the defendants and said Latta neglected and refused, and until the present time have neglected and refused, to repay or disburse on plaintiffs' account the said sum of money or any part thereof, and, until the rendition of the said account by the said firm, the plaintiffs, since the year 1872 and the withdrawal from their enterprise of the said Stewart, as hereinbefore men-
135 tioned, had been entirely unaware of the state of accounts between themselves and the said firm; that no account had been presented or given to them or either of them by the said firm; that they had never made any request for any such account of the said firm or demanded from it the balance due them; that they kept

no accounts of their transactions with said firm, and relied for their protection implicitly upon the honesty and good faith of the said firm.

13th. Complainants further aver that in the month of January, 1877, they were informed by said firm, through the said James M. Latta, that by an arrangement made between the members of said firm all remittances of money to be thereafter made by plaintiffs on account of said property should be made to James M. Latta, who would disburse the same on account of plaintiffs under the same agreement and the same conditions theretofore existing between said firm and complainants; that in accordance with this information complainants from time to time, between the 1st day of June, 1878, paid and remitted to said Latta considerable sums
136 of money to be expended in their behalf as hereinbefore stated, and that on or about the 25th day of June, 1878, the said defendant Latta had in his hands, of money belonging to complainants, not less than $10,000, of which he, the said defendant, on or about the said last day mentioned, diverted and appropriated to his own use the sum of $5,827.50 on the pretext, as complainants are informed and believe, that the said amount was due to him on account of care and management of complainants' said property, whereas in fact the said defendant had exercised no care or management over said property otherwise than in the manner and under the arrangement hereinbefore stated, and nothing whatever was due to him therefor, as said defendant at the time well knew; yet the said defendant has since retained the whole of said amounts, and has ever since, though often requested by your complainants, neglected and refused to account or pay to or for the complainants the whole or any part thereof.

Complainants further aver that of the money remitted by
137 complainants to said defendant Latta to be by him disbursed on their account, as above set forth, there still remains in his hands, over and above the said sum of $5,827.50, the further sum of $1,085, which he has never disbursed on account of complainants and for which he has never accounted to them in any manner, but which is now justly due from him to them.

14th. Complainants further aver that in the latter part of the year 1872 and the spring of 1873 the complainant Sunderland individually purchased through the said firm several parcels of unimproved real estate in the northwestern quarter of said city, which were, soon after being purchased, placed in the hands of said firm by said Sunderland for sale in the same manner and under the same arrangement as above stated in reference to the joint property of complainants, and in like manner remained in the hands of said firm for sale, the title standing in the name of James M. Latta, trustee, until the 1st day of January, 1877; that during said period the said Sunderland from time to time placed in the hands of said firm large sums of money to be by them disbursed on account of de-
138 ferred payments, interest, taxes, &c., accruing on said property belonging to him individually, and in respect to the reception and disbursement of said funds the firm occupied the same re-

lation toward said Sunderland as that which it occupied, as hereinbefore stated, toward the complainants jointly in respect to the reception and disbursement of their joint funds, and the services rendered by the said firm in reference to such individual property during said period were of the same character and under the same arrangements as therein performed for complainants in reference to their joint property, as hereinbefore stated; that in the month of December, 1876, under a pretext of a charge for care and management of said property, the defendants wrongfully and fraudulently took from the individual funds of complainant Sunderland then in their hands the sum of five thousand nine hundred and seventy-three dollars ($5,973) and appropriated the same to their own use and still retain the same, and also, in the same month or at some time prior thereto, wrongfully and fraudulently took from said funds,

139 on pretext of a commission upon a sale of property, for which, as said firm well knew, the said Sunderland was in no way liable, the further sum of one thousand dollars ($1,000), and appropriated the same to their own use and still retain the same; that the taking of said sums of money was done secretly, and was carefully concealed by said firm from said Sunderland until disclosed to him in the month of July, 1878, at the same time and in the same manner as the facts in respect to the misappropriation of the joint funds of complainants as hereinbefore set forth.

15th. Complainants further aver that between the 1st day of January, 1877, and the 22d day of June, 1880, the complainant Sunderland remitted to defendant, James M. Latta, under the same circumstances and for the same purpose as hereinbefore stated in respect to the joint remittances to him by the complainants, large sums of money to be expended on account of his individual property, and that on or about said last-named date, under the pretext of a charge for care and management of the individual property of said Sun-

140 derland, and in substantially the same manner and under the same circumstances as hereinbefore set forth in respect to the abstraction of the joint funds of complainants under a like pretext, he wrongfully abstracted from said funds and appropriated to his own use the sum of one thousand six hundred and seventy-two ($1,672) dollars, which sum he has since wrongfully and unlawfully retained, and of the fact that said sum had been so taken by said Latta the said Sunderland first obtained knowledge by an account rendered by said Latta to him in the latter part of the month of July, 1878.

The complainants, who expressly waive an answer from the defendants, pray that the defendants, Hallet Kilbourn, John F. Olmstead, and James M. Latta, may account fully to the complainants of and concerning their said trust in respect to the said transactions hereinbefore set forth, and be required by the decree of the court to pay over to the plaintiffs all such sums of money as shall be found equitably due from them to the plaintiffs on account of the said several breaches of trust, and particularly that they and each of them may be decreed to pay the plaintiffs the sum of $25,000, with interest thereon from the 25th day of May, 1872, at the rate

141 of six per centum per annum; the sum of $3,316, with interest thereon at the same rate from the 23d day of May, 1872; the sum of $5,319.55, with interest thereon at the same rate from the 17th day of June, 1872; the sum of $2,663.20, with a like rate of interest from the 1st day of July, A. D. 1872; the sum of $16,526, with interest thereon at the same rate from the 31st day of December, 1876, and the further sum of $22,973, with interest thereon at like rate from the 27th day of May, 1872; also that the defendant Latta pay to complainants the sum of $5,827.50, with interest thereon at six per cent. per annum from the 1st day of August, 1878, and the further sum of $6,973, with interest thereon at like rate from the 31st day of December, 1876, and that the defendant, James M. Latta, pay to the complainant Sunderland the sum of $1,672, with interest at like rate from the 1st (day?) of August, 1878, and for such other and (fur?)ther relief as to the court may seem pro(per?) in the premises.

THOMAS SUNDERLAND.
C. J. HILYER.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

142 I do solemnly swear that I have read the foregoing bill by me subscribed and know the contents thereof, and that the f(acts?) therein stated upon my personal kn(owledge?) are true, and that the facts therein st(ated?) upon information and belief I beli(eve?) to be true.

C. J. HILYER.

Sworn and subscribed before me this 21st March, A. D. 1882.
[SEAL.] EDWARD J. STELLWAGEN,
Notary Public.

143 *Answer to Orig'l Bill and Amend't. Filed Apr.* 6, 1882.

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
JOHN F. OLMSTEAD and HALLET KILBOURN. } Equity, 7764.

Answer to bill as first amended.

Joint and several answer of the defendants, John F. Olmstead and Hallet Kilbourn, to the original bill as amended by an amendment filed March 14, 1882, in pursuance of an order to that effect made on that day.

First. That they are advised by counsel and believe and therefore say that the pretended agreements set out and alleged in the original bill and repeated in the said amendment, if such agreements had

been made, would have been and are void, because they are contrary to public policy, and because, as set out and alleged in said
144 pleadings, are in law fraudulent and void; and these defendants claim the same benefit and advantage of this defense as if they had made the same by special demurrer.

These defendants deny that the said firm was ever engaged or employed by the said complainants and the said Stewart, as alleged in the said bill and said amendment, or that they transacted business for the said complainants and the said Stewart in any other manner than as they transacted business for the general public. They deny that there was at the time alleged any bargain or understanding between the said firm and the said complainants and Stewart touching the compensation that was to be paid to the said firm for conducting transactions in the line of their business. They allege and aver the truth to be that there was no general understanding or agreement whatsoever between the said parties
145 and the said firm, and that whenever the services of the said firm were desired by the complainants and the said Stewart such services were secured in particular instances and for particular services. There was no agreement or understanding that the business of said complainants and the said Stewart should be transacted by the said firm, and the said complainants and the said Stewart were under no obligation to deal with the said firm in preference to other real estate agents, and the said firm was under no obligation to transact business for the said complainants at any time, and they say that the said complainants and the said Stewart did, in at least one instance, secure the services of another real estate agent, through whom they conducted an extensive transaction in the way of purchasing a large quantity of real estate in the city of Washington during the period mentioned in the said bill. It
146 is not true that it was agreed by the said complainants and the said Stewart on the one side and the said firm on the other side that the said firm should be entrusted as agents of the said complainants and Stewart for the purchase of real estate in any part of the city of Washington as they, the said complainants and Stewart, might elect to acquire; and they further deny the averments contained in the said bill touching the compensation to be paid to the said firm by the said complainants and Stewart, and they repeat that there was no agreement as to compensation; and they further say that the relations existing between the complainants and the said firm during the period mentioned in said bill were no other than and not different from those existing between said firm and any purchaser of real estate transacting business with said firm, and
147 they refer to all the allegations and denials contained in their answer to the original bill as a part of their answer, and pray that they may have the same force and effect as if particularly repeated herein.

Second. That said complainants did not complain of or make known their alleged grievances within a reasonable time, but, having full and free access to the public land records of this District, and having full knowledge of all and singular the matters and things

connected with their business with said firm of Kilbourn & Latta, delayed proceedings for an unreasonable time, and until the said firm of Kilbourn & Latta had been dissolved, and until full settlement between the parties in said firm had been made and concluded, and until the positions of said partners, respectively, had been changed, and until said firm had made other settlements and payments to and with other persons connected with said real
148 estate and said business, which could not now be rectified in the event of an allowance of the said claims and demands of said complainants or any part thereof.

Third. That a long time before the filing of the original bill in this cause a full and true account was stated and settled in writing between the said firm of Kilbourn & Latta and the said complainants of all sums of money received by said firm from, for, or on account of the said complainants, and of all matters and things mentioned and set forth in said original bill or in said original bill as amended as aforesaid, and of all and every the transactions between the said complainants and said firm of Kilbourn and Olmstead, and the said account stated was by said firm delivered to and was by said complainants kept and retained without objection, and that afterwards the said complainants, after a careful examination
149 of said account stated and every item and particular thereof, which these defendants aver, according to their best knowledge and belief, to be just, *and* approve and allow the same, and did actually receive from said firm the sum of $2,715.58, the balance of said account, which by said account appeared to be justly due to said complainants from said firm, and said complainants made, signed, and delivered a receipt therefor, which these defendants submit was a full discharge and settlement of all the matters and things now brought forward as the subject of the said bill and amended bill. At the time of such settlements the said complainants had full knowledge of all the matters and things so complained of; and these defendants claim the same benefit and advantage from and by reason of this defense as if they had interposed the same by plea.

150 Fourth. The said pretended agreement set forth in the said bill as originally filed and as amended, is alleged by said complainants to have been a contract or sale of lands, tenements, or hereditaments or an interest in or concerning lands in the District of Columbia, and that said pretended agreement was not to be performed within the space of one year from the alleged date of such pretended agreement, and it does not appear that said pretended agreement or any memorandum or note thereof is or ever was in writing or signed by the said firm or any one of them; and these defendants are advised and believe that, according to the statute in such case made and provided, parol evidence is not admissible to show or establish the same; these defendants therefore claim the same benefit and advantage from the said statute, commonly called the "statute of frauds," as if they had specially pleaded the
151 same or had demurred to the said bill of complaint and the said amendment thereto.

Fifth. That the cause or causes of action, if any there may be,

arising to the plaintiffs on account or by reason of the said several allegations and complaints in their said pleadings contained did not accrue within three years before the said original bill was filed, and this allegation these defendants make in bar of the said complainants' said original bill and the said amendment and pray that they may have the same benefit therefrom as if they had formally pleaded the same.

Sixth. In answer to the averments contained in the said amendments relating to square 156 these defendants say that it is not true that said firm was employed or that the said firm was requested by said complainants, as their agents or otherwise, to make in-
152 quiries touching the property in said square 156, and they say that the allegations in said amendment made and set forth are wholly false, except as hereinafter particularly admitted.

These defendants admit that the said property, at the time the sale was made to said Sunderland, Hillyer, and Stewart, was incumbered to the extent of about $70,429.31, and that such encumbrance was subsequently paid, and that the title to said property was vested in said defendant, Hallet Kilbourn, as trustee for an association known as the "Real Estate Association," which said real estate association was organized by the said firm of Kilbourn & Latta for the purposes of speculation in real estate, and the business thereof has been fully wound up and settled long since.

Long prior to the time of the purchase of said square 156
153 by said complainants and said Stewart the said property had been bought by said firm, and had been conveyed to said Kilbourn as trustee, and the deed had been (on the — day of ——, 1872) duly recorded upon the land records of this District, and at the time of said sale said complainants well knew that the said property had been so conveyed to said Kilbourn; and they, said complainants, well knew that said firm at the time negotiations for said purchase began, were the owners and sellers thereof, and knew they were selling the same for their own advantage and interest as well as for the advantage of those interested with them in said property.

They further say that the price at which said property was sold to said complainants was reasonable and fair and was not more than the same was worth at that time, and they say that said complainants conducted the negotiations in person and relied exclu-
154 sively, so far as these defendants know, upon their own judgment. They aver that said complainants did not rely upon the judgment or recommendations of the said firm.

They admit that they sold said property at and for the sum of $90,429.90, and that said sum was an advance of about $20,000.00 upon the price originally by them paid or agreed to be paid for said square.

Touching the charges and averments in said amendment contained in relation to settlements or accounts with other members of said real estate association, these defendants are advised by counsel they need not answer, because such matters do not concern the said complainants and are immaterial in this behalf and are scandalous;

but they allege that the said charges in said amendment contained as to the failure to account to members of said real estate as-
155 sociation are maliciously false, as said complainants well knew when they made said charges.

Further answering the averments in said amendment to said bill, these defendants say that the sum of $90,429.90 was the actual price for which said property was sold to said complainants and said Stewart, and these defendants emphatically deny that there was any concealment by them or any of said firm from said complainants or said Stewart of any matter, fact, or thing relating to any part of their business with said firm, or of anything which they had a right to know or should have in fairness been told; and these defendants deny all and all manner of charges and averments of fraud and concealment in said bill and said amendment contained.

Seventh. These defendants further say that they again urge the objection and rely upon the same that the said William M.
156 Stewart is a necessary, indispensible party to these proceedings, and they claim the same benefit and advantage of this objection as if they had specially demurred thereto for want of proper parties.

And having fully answered the said bill as originally exhibited and as amended by the said amendment filed on the said 14th day of March, 1882, they pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

HALLET KILBOURN.
JOHN F. OLMSTEAD.

Witness:
B. F. STEIGER (as to H. K.).
B. F. STEIGER (as to J. F. O.).

ENOCH TOTTEN,
Sol'r for Def'ts.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

157 Hallet Kilbourn and John F. Olmstead, being first duly severally sworn, do depose and say and each for himself says that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated positively he knows to be true, and that the matters and things stated on information and belief he believes to be true.

HALLET KILBOURN.
JOHN F. OLMSTEAD.

Subscribed and sworn to before me this 5th day of April, 1882.
[SEAL.]
B. F. STEIGER,
Notary Public.

158 *Order Referring to Spec'l Ex'm'r to Take Test'y. Filed May* 11, 1882.

In the Supreme Court of the District of Columbia. In Equity.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN, JAMES M. LATTA, J. F. OLMSTEAD. } No. 7764.

Upon consideration by the court it is this 11th day of May, 1882, ordered that the above cause be referred to Wm. T. S. Curtis, as special examiner, to take the testimony in said cause.

W. S. COX, *J.*

159 *Separate Answer of Latta to Amended Bill. Filed Jun.* 15, 1882.

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND & CURTIS J. HILLYER
vs.
HALLETT KILBOURN, JAMES M. LATTA, & JOHN F. OLMSTEAD. } Equity No. 7764.

The answer of James M. Latta, defendant, to the bill of complaint of Thomas Sunderland and Curtis J. Hillyer, complainants.

This defendant, now and at all times saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainants' said bill of complaint contained, for answer thereto, or to so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, answering, says—

1. That said defendant is not informed whether said com-
160 plainants are citizens and residents of the States of California and Nevada, respectively, as alleged in the first paragraph of said complainants' said bill of complaint, and he therefore leaves said complainants to make such proof thereof as they may be advised is necessary or material.

2. And said defendant, for answer to the second paragraph of said complainants' said bill of complaint, says that he admits the same to be true.

3. And the said defendant, for answer to the third paragraph of said complainants' said bill of complaint, says that he admits that at about the time mentioned the said complainants and said Stewart formed a copartnership for the purchase of real estate situate in the northwestern part of the city of Washington, and that the interests of said copartners while said firm existed were as stated; but the defendant charges that in a short time after the formation of said partnership said Stewart sold his interest therein to said

Thomas Sunderland and ceased to be a member of said firm;
161 and the defendant says that in April, 1872, he was a member of the firm of Kilbourn & Latta, doing business as real estate brokers in the city of Washington; that said firm was composed of this defendant and Hallett Kilbourn and John F. Olmstead, the last of whom had a limited and special interest in the business of said firm; that said firm of Kilbourn & Latta was engaged in the business of buying and selling real estate on commission, and in special instances and as agreed upon from time to time they bought and sold real estate on their own account. They also negotiated loans and carried on a general brokerage business in real estate and personal property; that it was the uniform habit of said firm to keep advised touching the real estate market in said city in reference to particular pieces of property for sale, the prices thereof, and to keep advised touching all persons who manifest desire to buy or sell real estate, and to transact business for such persons as might see proper to employ them.

162 This defendant denies that said firm of Kilbourn & Latta ever entered into any agreement with said complainants and said Stewart or either of them of the kind or character set forth in said third paragraph of said bill of complaint, and he avers that said firm of Kilbourn & Latta transacted business for said complainants and said Stewart in the same manner and on the same terms as they transacted business for the general public and not otherwise or differently; and this defendant avers the truth to be that there was not at the time alleged or at any time any bargain, agreement, or understanding whatsoever between the said firm of Kilbourn & Latta and said complainants and said Stewart or any of them touching the compensation that was to be paid to said firm of Kilbourn & Latta for conducting transactions for said complainants and said Stewart in the line of their business as brokers as aforesaid. The defendant avers that whenever the services of said firm of Kilbourn & Latta in the line of their business were desired by the complainants and said Stewart they
163 were secured by said complainants and said Stewart in particular instances and for particular purposes, made known at the particular times the services of said firm of Kilbourn & Latta were engaged by said complainants and said Stewart; and this defendant avers that said complainants and said Stewart did, in at least one instance, secure and employ the services of another real estate agent, through whom they conducted an extensive transaction in the way of purchasing a large quantity of real estate in said city of Washington during the period mentioned in said bill; and the said defendant denies that said complainants and Stewart bargained for and procured the benefit of the knowledge, judgment, and experience of said firm of Kilbourn & Latta in respect to the purchase of real estate, except upon the same terms and in the same manner as any person employing said firm for some particular service
164 procured the same, and said firm of Kilbourn & Latta was only employed and their knowledge, judgment, and experience secured or bargained for by said complainants and said Stewart

in particular instances and for particular purposes; and the said defendant says it is not true that it was agreed by said firm of Kilbourn & Latta and said complainants and Stewart or either of them that said firm of brokers should be entrusted, as agents of said complainants and Stewart, for the purchase of real estate in any part of the city of Washington, as said complainants and said Stewart might elect; and this defendant explicitly denies all and singular the allegations of said paragraph of said bill of complaint touching the subject of compensation of said firm of brokers for their services for and on behalf of said complainants and said Stewart, as such brokers; and this defendant avers that said firm of Kilbourn & Latta, during the period mentioned in said bill of complaint, had on hand a large number of lots and pieces of land for sale, and in each instance
165 when said complainants and said Stewart purchased any lot or parcel of land from said firm of brokers the said complainants and Stewart or some of them were truly informed of the price at which said property could be purchased, and in nearly every, if not every, instance said complainants or one of them actually examined said property and decided for themselves whether they would or would not buy the same for the price and on the terms proposed, and where the proposal was accepted by them the purchase was carried out and consummated in each particular instance; and the defendant says that during the time of the transaction referred to in said bill of complaint the real estate market in said city of Washington was very active, and said firm of brokers was busily engaged in making sales and purchases of real property in said city of Washington, and that, by reason of the activity of said real estate, it was not an easy matter to secure in all cases the particular property which
166 any given purchaser might desire; and this defendant avers that said complainants in every instance relied upon their own judgment and decided for themselves whether they would or would not purchase any given lot or piece of property; and this defendant denies that said firm of Kilbourn & Latta made any representations to said complainants as to the lowest price for which any given property could be obtained from the owner thereof, nor did they undertake or agree to furnish such information; but said firm of brokers did, whenever applied to by said complainants, truly and correctly inform them what the lowest price was for which the said firm of Kilbourn & Latta could secure any given lot or parcel of real estate, if they knew the price of the same or if the same had been offered to them; and the defendant avers that said firm of Kilbourn & Latta, in each particular instance when employed by said complainants in making or assisting to make purchases of real estate for
167 them, gave said complainants their best knowledge, judgment, and experience touching the same, and honestly and faithfully informed them of all matters and things within the knowledge of said firm of Kilbourn & Latta touching the desirability or otherwise of making such proposed purchases; and the defendant says that each and every charge and averment in said third paragraph of said bill of complaint, except as in this para-

graph of answer expressly and in direct terms admitted, is untrue and unfounded, and he explicitly denies the same.

4. And the defendant, for answer to the fourth paragraph of said complainants' said bill of complaint, says that the charges and averments in said paragraph of said bill of complaint, in the sense and manner in which the same are set forth and alleged therein, are, and each of them is untrue, unfounded, and misleading. The defendant avers the truth to be that the sole and only foundation for the charges and averments contained in said fourth paragraph
168 of said bill of complaint is the following—that is to say, said firm of Kilbourn & Latta had on hand for sale a large quantity of lots and pieces of property in the northwest quarter of the city of Washington, of which fact said complainants had knowledge, and it is true that said firm of Kilbourn and Latta did call the attention of said complainants and said Stewart to various parcels of property in said quarter of said city which said firm of brokers had for sale, and stated the price asked for each to said complainants and said Stewart or one of them with a view to selling said lots and pieces of land to said complainants and Stewart, and from the numerous properties so mentioned and pointed out to them said complainants and said Stewart did select and purchase on their own judgment a small portion of them, on each of which pieces of property they made their own offer, and those offers were submitted by the firm of Kilbourn & Latta to the owners of such property, whose brokers said firm of Kilbourn & Latta were, and when said
169 parties came to an agreement the purchase was made by the said complainants and said Stewart of or through said firm of Kilbourn & Latta, and the commissions of said firm of brokers were paid by the vendors for whom said firm acted; and the defendant, except as in this paragraph of answer admitted, denies each and every charge and averment in said fourth paragraph of said complainants' said bill of complaint contained, and says that each and every charge and averment therein is untrue and unfounded, except as above stated and admitted in this paragraph of answer.

5. And the defendant, for answer to the fifth paragraph of said complainants' said bill of complaint, says that the charges and averments and each of them in said fifth paragraph of said bill of complaint contained are untrue and unfounded, as said complainants well know. The defendant says that it is not true that in April or May, 1872, or at any time the said complainants and said Stewart or either of them called the attention of said firm of Kilbourn & Latta to square numbered 115, in said city of Washington, and requested
170 the said firm of brokers to ascertain the owner thereof and the price at which the said square could be purchased, nor is it true that on or shortly before May 25th, 1872, the said firm of brokers informed said complainants that the said firm of brokers had been in negotiation for the purchase of said square from the owner thereof and represented to the complainants and said Stewart that the sum of $65,000 was the lowest price at which said square could be obtained from the owner thereof, nor did they advise said complainants to purchase said square at said sum of $65,000; and

the said defendant explicitly denies all charges of fraud and misrepresentation in said paragraph of complaint contained, and avers that all of said charges of fraud and misrepresentation are false and unfounded and known to be so by said complainants; and the defendant says that the truth in relation to the purchase of said square 115 in said city is as follows, and not otherwise—that is to say: In
171 or about the month of August, 1871, the said firm of Kilbourn & Latta entered into negotiations for the purchase of said square 115 for themselves and not for others, and a bargain was finally made for its purchase at $40,000 with certain of the trustees holding the title to said square, but a long delay occurred in procuring the consent of all of said trustees to said bargain, inasmuch as some of said trustees were not residents of the District of Columbia, and the confirmation of such bargain was not finally obtained from all of such trustees until some time about the 1st of May, 1872; and defendant says that said firm of Kilbourn & Latta, at about the date mentioned in said paragraph of said bill of complaint, informed said complainants that they had bargained for and had an agreement for the purchase of said square 115 for themselves, and said complainants for some time tried to purchase said bargain and agreement so held by said Kilbourn & Latta from them, and finally they did agree to give said firm of brokers for said square the sum of $65,000, and said square was sold by said firm of brokers as the vend-
172 ors thereof to said complainants as purchasers for said sum of $65,000; and the defendant says that there was no fraud or concealment practiced on said complainants or either of them by said firm of Kilbourn & Latta or either of them, but that said complainants were fully informed as to the purchase of said square by said firm of brokers, and said complainants, after examination of said square, in reliance on their own judgment, purchased the same from the said firm of Kilbourn & Latta as aforesaid, and the said complainants requested this defendant to take the title to said square in his own name in trust for said complainants, and said complainants informed said firm of brokers that no intervening deed to them was necessary to show that it had passed through their hands as vendors, and that in consequence thereof the deed of conveyance was made directly from said parties with whom said firm of brokers had bargained for the purchase of said square to this defendant as trustee as aforesaid, and said complainants had full knowl-
173 edge of all said facts at the time they purchased said square, and said complainants knew that the said firm of Kilbourn & Latta, before the purchase of said square was finally closed by said complainants and before any payments had been made by them, had received a larger offer for said square than $65,000 from other parties; and defendant says that it is probably true, as stated in said paragraph, that the sum of $20,000 was paid by said complainants on account of the purchase of said square, but for accuracy defendant begs leave to refer to the accounts furnished by said firm of brokers to said complainants, which show the precise amounts and dates of payment, and this defendant denies that the purchase and sale of said square 115, mentioned in said paragraph of said bill of

complaint, was other or different than herein stated, and he most explicitly denies as false and unfounded the charges of fraud, cheating, and misconduct made against said firm of Kilbourn & Latta in relation thereto, and he denies that said firm of
174 Kilbourn & Latta agreed to or were under any obligation to conduct and conclude the purchase of said square 115 wholly in the interest of said complainants and said Stewart, and defendant says that at the time said conveyance of square 115 was made to him as such trustee the consideration was expressed in said deed at $40,000, that being the sum for which said firm of Kilbourn & Latta had purchased the same as hereinbefore stated, and that said complainants knew of and examined said deed and the same was duly recorded on the 2nd day of October, 1872, in the office of the recorder of deeds of said District of Columbia, as said complainants well knew, and where said complainants could and, as this defendant avers according to his best information and belief, they did obtain full knowledge of all facts disclosed thereby; and said defendant denies each and every charge and averment in said fifth paragraph of said bill of complaint not herein admitted.

6. And said defendant, for answer to the sixth paragraph
175 of said complainants' said bill of complaint, says that it is probably true that in the early part of the month of May, 1872, said complainants and said Stewart had under consideration the desirability of purchasing lot 17, in square 158, in said city, but it is not true that said complainants and said Stewart requested said firm of Kilbourn & Latta, as their agents, to make inquiries respecting the said lot and to ascertain the lowest price at which it could be purchased on their account; nor is it true that said firm of brokers subsequently and before the 23rd day of May, 1872, informed said complainants and said Stewart or either of them that the firm of Kilbourn & Latta had been in negotiation with the owners of said lot and had ascertained that the same could be purchased for the sum of $8,316, and that this was the lowest price for which said lot could be purchased from the owner thereof; nor is it true that said firm of Kilbourn & Latta advised said complainants and said Stewart to purchase said lot at said price; and the defendant charges
176 the truth to be in relation to said lot 17, in square 158, as follows: The complain-ts, at about the time mentioned in said bill of complaint, stated to the said firm of Kilbourn & Latta that they had examined said square 158, *at* that they were ready and willing at any time to pay for any lot or lots in said square 158 at the rate of fifty cents per square foot; but this defendant denies that said firm of Kilbourn & Latta was requested to purchase said property or any part of it on account of the complainants; and defendant says that said complainants had no information about said lot 17 until said firm of brokers offered to sell said lot to them at fifty cents per square foot, which offer was accepted by said complainants and said Stewart and said lot sold to them at said price of fifty cents per square foot, amounting to the sum of $8,316; and dfeendant says that about the 30th day of April, 1872, and before said complainants had spoken to them about said lot 17 the said

firm of Kilbourn & Latta had purchased the same, and the
177 title thereof was held in trust for them by one John Bull, and when said complainants had purchased said lot from said firm of brokers as vendors as aforesaid and for the price aforesaid said Bull, on behalf of said firm of brokers, as vendors, on May 31st, 1872, conveyed said lot for the purchase price agreed on to said James M. Latta, as trustee for said complainants and said Stewart; and the defendant says that said deed of conveyance was duly recorded on the 2nd day of October, 1872, in the office of the recorder of deeds of said District of Columbia, and said complainants from the time of the recording of said deed had full notice of the contents thereof; and the defendant says that all and each of the charges and averments in said sixth paragraph of said bill of complaint contained, except as in this paragraph of answer stated and admitted, are false and unfounded, and he emphatically denies all and singular the same.

7*a*. And said defendant, for answer to so much of the sev-
178 enth paragraph of said complainants' said bill of complaint as relates to the purchase of square 155, in said city, says that each and every charge, averment, and allegation therein contained, in the sense and manner imputed to the acts, statements, and representations of said firm of Kilbourn & Latta in relation thereto, is and are false and unfounded, and he denies the same and every one thereof. This defendant says that the truth is that said square 155 mentioned in said paragraph of said bill of complaint was bought by George Burgess and James M. Ormes of the owner thereof; that said square was bargained and agreed to be sold by said Burgess & Ormes to one Charles A. Eldridge and others at an advance, and, before a deed of conveyance was made to said Eldridge and others by said Burgess and Ormes, said complainants bought said square of said Eldridge and others at a further advance, the amount of which this defendant is not now able to state, not having access to the old books of said firm of Kilbourn & Latta, which con-
179 tain a full statement in relation to the purchase of said square, and to which, for accuracy, reference is made; and defendant says after said complainants had so purchased said square they procured said Burgess & Ormes to convey said square directly to this defendant, as trustee for said complainants and said Stewart, by a deed in trust bearing date June 7th, 1872, and which said deed was duly recorded in the recorder's office of said District of Columbia October 2d, 1872, in Liber No. 691, folio 125, to which said record, for accuracy, reference is here made; that said complainants had notice of the contents of said deed from the time it was so recorded; and defendant says that said deed and the record thereof show the true consideration for said square, which was $77,650, as follows: $13,000 was paid to Burgess & Ormes, and the payment of an encumbrance of $64,550 existing on said square was assumed as a part of the purchase price of the same; and defendant says that said complainants made the purchase of said square on their own judgment, with full knowledge of all the foregoing
180 facts, and with full notice of all facts disclosed by said — of

conveyance from Burgess and Ormes to this defendant; and this defendant denies all fraud, cheating, and misrepresentation therein alleged, and denies that said firm of Kilbourn & Latta fraudulently or otherwise wrongfully took and appropriated the sum of $5,319.55 or any part thereof on account of the purchase of said square 155; and defendant avers that what the firm of Kilbourn & Latta made out of square 155 was their regular commissions and nothing more; and this defendant explicitly denies each and every charge and averment in said seventh paragraph of said bill of complaint relating to the purchase of square 155 not herein stated and admitted, and says that the said charges and averments and each of them are untrue and unfounded.

7*b*. And, for answer to so much of said seventh paragraph of said bill of complaint as relates to lot 8 and the west half of lot 9 and
181 lot 10, in square 158, the defendant, answering, says that the charges and averments and each and every one of them therein contained are untrue and unfounded. This defendant says that at and for a long time prior to June 14, 1872, the said firm of Kilbourn & Latta were the owners of said lots and parcels of land, as complainants well knew, said property having been purchased by said firm of Kilbourn & Latta for themselves; that after said firm had so become the owners of said property the complainants applied to them to purchase the same, and the said firm of Kilbourn & Latta sold the said property to said complainants at the prices mentioned in the several deeds of conveyance thereof at and for the aggregate sum of $12,289.50; that three several deeds for said lots were executed by John F. Olmstead, who held the title thereof for said firm of Kilbourn & Latta, to this defendant as trustee for said complainants; that said deeds were each executed on the 14th day of June, 1872, and each was duly recorded in the office of the recorder of deeds of the District of Columbia on
182 the 2nd day of October, 1872, of which said recording and of the contents of said several deeds complainants have had notice from the aforesaid date hitherto; and this defendant denies that said firm of Kilbourn & Latta or either of them fraudulently or otherwise charged or took from said complainants, as in said bill alleged, the sum of $2,663.70 or any other sum in manner or form as in said bill alleged or in any wrongful or improper manner whatsoever; and this defendant denies each and every charge of fraud, misrepresentation, and concealment in said paragraph alleged, and avers that such charges are gratuitously false and unfounded, and he avers that no such frauds as alleged in said paragraph were discovered by said complainants or either of them, for the reason that no such frauds were practiced by the said firm of Kilbourn & Latta on said complainants and said Stewart or either of them.

7*c*. And, for answer to so much of said seventh paragraph
183 of said bill of complaint as relates to the time during which said complainants and each of them were absent from the District of Columbia, he says that he admits that said complainants were absent from said District of Columbia a portion of the time between 1872 and 1876; but this defendant says that the truth is that

all of the purchases of real estate mentioned in said bill of complaint were made between about the 1st of May, 1872, and about the 1st of May, 1873, during which period of time said complainants were each residing in the city of Washington, and were present at the office of said firm of Kilbourn & Latta almost, if not quite, daily from the time the first purchase was made, in 1872, until the last purchase in said bill mentioned was made, in the spring of 1873, and said complainants there fully discussed every purchase, examined every abstract of title and every deed and deed of trust, and had full written and printed statements of every purchase made by them or on their behalf furnished to them by said firm of Kilbourn & Latta, and they compared every deed, statement,
184 and deed of trust for themselves, said complainants being each a lawyer of skill and ability, and nothing was done by said firm of Kilbourn & Latta in relation to said purchases without full knowledge, approval, and direction of said complainants.

8. And this defendant, for answer to the eighth paragraph of said complainants' said bill of complaint, says that he denies the charges and averments therein contained and each and every one of them, and says that they and each of them are untrue and unfounded. The defendant says that the truth is that the title to the first purchase of real estate made by said complainants and said Stewart was taken in the name of Curtis J. Hillyer, one of said complainants, and that subsequently they thought it advisable to have the titles to such purchases of real estate as they might elect to make taken in the name of a party having no interest in such purchases, and said complainants, without any request or suggestion from said firm of Kilbourn & Latta or either of them, came to this defendant and solicited him to take the titles to the real estate purchased
185 and to be purchased by them in trust to hold for said complainants; and this defendant says that at first he strongly objected thereto, but finally his objections were overcome by said complainant, Thomas Sunderland, promising to take up all the notes this defendant might give for deferred payments on said real estate and hold them as an individual investment, which he utterly failed to do, and he, this defendant, promised to and did thereafter act as such trustee, and the defendant says that the averment that it was suggested and recommended by said firm of Kilbourn & Latta that, for any purpose whatever, the titles of real estate purchased and to be purchased by said complainants and said Stewart should be taken in the name of the members of said firm or any of them is gratuitously false, and it is in like manner false that said firm procured the titles of said real estate so purchased by said complainants to be conveyed to this defendant as trustee, except in pursuance of the arrangement above stated; on the contrary thereof the complainant, Curtis J. Hillyer, did, in pursuance of the
186 agreement between them, on the — day of ——, 1872, convey to this defendant squares Nos. 66 & 93 in said city; and this defendant says that it is true that he took possession of said deeds and muniments of title to said property and has retained the same; but he says that said complainants had permission, at all times

when requested by them, to examine any and all such deeds and muniments of title, and they did frequently see and examine the same, as hereinbefore stated; and the defendant says that on June 15th, 1878, said complainants had all of said deeds, muniments of title, and vouchers relating to the purchase of said real estate and the payment of moneys on account thereof for assessments, taxes, liens, interest, &c., &c., in their possession, and examined them as fully as they chose to do, and then returned the same to this defendant; and the defendant says that said deeds and muniments of title were all properly recorded in the office of the recorder of deeds of said District of Columbia, of which said complainants had
187 notice, and where they could at any time examine the record of such deeds and muniments of title, and the defendant explicitely denies that said deeds and muniments of title were withheld from record for an unreasonable time in order to conceal the fraudulent conduct of said firm of Kilbourn & Latta. He says that said deeds and muniments of title were properly placed of record within the period of time prescribed by law for the recording of such instruments. The defendant says that he admits that said deeds and muniments of title were not at once placed of record, but the same were withheld from record for a limited period of time, with the approval and agreement of said complainants and for their own gain and advantage. The deeds of said complainants and the deeds of nearly all the property purchased through the office of said firm of Kilbourn & Latta by the Real Estate Association and others and the deeds of real estate purchased by said firm of Kilbourn & Latta for themselves were withheld from record by mutual agreement among all said parties, to enable said parties to make such purchase as
188 they might desire without exciting the real estate market by the daily recording of deeds of real estate purchased in said north western quarter of said city, and the defendant says that no parties were more anxious that this should be done than said complainants, and all of said deeds were filed for record in one day or or about the 2nd day of October, 1872, and a full list thereof was published in all the city papers and read and commented on approvingly by complainants in the office of the said firm of Kilbourn & Latta.

9. And the defendant, for answer to the ninth paragraph of said complainants' said bill of complaint, says that he cannot deny the same, nor has this defendant such information touching the averments of said paragraph as that he can admit the same as true, and he thereupon leaves said complainants to make such proof thereof as they may be advised is material or necessary in the premises.

10. And the defendant, for answer to the tenth paragraph
189 of said complainants' said bill of complaint, says that he admits that a large amount of real estate was left in the hands of said firm of Kilbourn & Latta by said complainants to be taken care of and managed, but he denies that in consideration of prospective commissions to be derived by said firm of Kilbourn & Latta from the resale thereof said firm agreed with the complainants that it would keep in its own books an account of said property and ascertain and notify the complainants of all payments necessary

to be made by said firm on account of interest, deferred principal, and general and special taxes, and upon receiving the funds therefor from complainants would disburse such funds as might be requisite and keep an account of all such receipts and disbursements without any charge for said services. The defendant denies that there was any such agreement between said complainants and said firm of Kilbourn & Latta in respect to the matter aforesaid as alleged in said tenth paragraph of said bill of complaint. The defendant says that it is
190 true that a great financial panic occurred in the month of September, 1873, and continued for several years thereafter, so that none of said property could be resold and no commissions whatever were or could be realized from any resales of said property; that about May, 1873, said complainant Sunderland went abroad and did not again return to Washington until in the year 1876; that from the time of said panic said complainant Hillyer advised said firm of Kilbourn & Latta that he should not be able to meet and he did not meet his share of the payments of interest, deferred principal (purchase-money), general and special taxes, nor did said complainant Sunderland meet his share thereof; that by reason thereof it became necessary for said firm and this defendant to spend their time and use their credit in saving said property of complainants from ruinous sacrifice. In view thereof said complainant Hillyer, in
191 the fall of 1873, enquired of the said firm of Kilbourn & Latta what their charges would be for caring for, managing, and preserving said property, taking care of general and special taxes, interest, and deferred purchase-money, and this defendant informed him that the charges of said firm would be one per centum per annum on the cost of said property so long as it was so left to be cared for, managed, and preserved, to which said Hillyer for said complainants agreed and consented; and the defendant says that the cost of said property was over $600,000, and that said firm had the care, management, and preservation thereof from the year 1872–'3 until December 31, 1876, and from that date until June 15, 1878, this defendant had the like care, management, and preservation thereof; and the defendant denies each and every charge and averment in said tenth paragraph of said bill of complaint, save and except as hereinbefore stated and admitted in this paragraph of answer.

11. And the defendant, for answer to the eleventh paragraph
192 of said complainants' said bill of complaint, says that it is true that said complainants did, prior to January 1, 1887, from time to time remit considerable sums of money to said firm of Kilbourn & Latta, but this defendant cannot say how much in the aggregate such remittances amounted to; that he has not had access for several years to the books of said firm of Kilbourn & Latta, where the amounts and dates of all such remittances are accurately stated, and to which for greater certainty he begs leave to refer, and he leaves said complainants to make such proof of the dates and amounts of said remittances as they may be advised is material or necessary. The defendant avers that the amounts of money so remitted by said complainants were greatly less than were necessary

to meet and pay the interest, deferred principal, and general and special taxes existing on said property, and the same were properly expended and accounted for, and by reason of the failure of said complainants to make the necessary remittances defendant was
193 compelled to and did borrow large sums of money to meet said debts and liabilities existing against said complainants' property; that in making such loans he gave deeds of trust in the nature of mortgages on portions of said property; he also executed his individual notes and used his individual credit and ability to secure money to meet the payments of interest, deferred principal, and general and special taxes existing on said real estate of complainants. The defendant says that for five years he was almost daily annoyed by duns and threats on account of the notes he had executed at complainants' request for deferred payments on said real estate and for loans he had made to meet interest, taxes, and other liabilities. The defendant, on information and belief, charges that said Sunderland, during the aforesaid period of time, had become bankrupt, and the defendant says it is not true that on the 31st of December, 1876, there was in the hands of said firm of Kilbourn and Latta the sum of 20,000 dollars of money be-
194 longing to said complainants, or any sum whatever when the liabilities of said complainants to said firm of Kilbourn & Latta were charged up and paid; and the defendant says that about the 31st day of December, 1876, a charge of about the sum mentioned in said paragraph was made against said complainants, and the amount of money of said complainants necessary to pay said charge was applied thereon; but the defendant denies that said charge and application of money to pay the same was wrongful or fraudulent, because he says that said complainants were at said date justly indebted to said firm for services of said firm in and about caring for, managing, and preserving the property of said complainants and in and about paying taxes, assessments, interest, and notes for deferred payments and for time and credit in borrowing for said complainants large sums of money to be used in paying
195 all such general and special taxes, interest, and deferred principal existing on said complainants' said property; that said services were rendered at the request of said complainants, with the agreement and understanding that said firm of Kilbourn & Latta should be paid therefor one per centum per annum so long as they had the care and management of said property for said complainants, which said rate is a very low and inadequate compensation for the services of said firm of Kilbourn & Latta in the premises; that said firm had the care and management of said property between three and four years, and this defendant from January 1, 1877, to June 15, 1878, thereafter; and said complainants at the date of said charge were justly indebted to said firm for the aforesaid services in a much larger sum than the amount of said charges. The defendant avers that he never received any part of the amount so charged and applied; that one-half of it was credited to and received by said Hallet Kilbourn and the other one-half thereof was credited to and received by said John

196 F. Olmstead; that both of said complainants saw said entry on the books of said firm of Kilbourn & Latta before the 15th of June, 1878, and well knew that this defendant received no part of said sum of money. This defendant, on information and belief, charges that an account current was furnished by said firm of Kilbourn & Latta to said complainants every six months from the date said property was left in the hands of said firm of brokers until said firm was dissolved on the 31st day of December, 1876, in which said accounts current was fully and correctly shown the amounts of all money received from or on account of said complainants and the disbursements made thereof, and said complainants were notified some time after the first of January, 1876, and before June 15, 1878, that said charge had been made for services by said firm of Kilbourn & Latta, and the defendant denies each and every charge and averment in said eleventh paragraph of
197 said bill of complaint contained, save and except as the same are in express terms admitted in this paragraph of answer.

12. And this defendant, for answer to the twelfth paragraph of said complainants' said bill of complaint, says that the truth is that from January 1, 1877, to about the 15th of June, 1878, this defendant had the care and management of the said property of the said complainants, rendering the same and like services as are set forth in the eleventh and other paragraphs of this answer, and under the like arrangements as to compensation. The defendant says that between the dates aforesaid he received some remittances from said complainants to be used for the purposes stated in the eleventh paragraph of answer; that he properly used and disbursed all sums of money so received from said complainants and rendered to them proper accounts of all moneys received and disbursed for said complainants on account of said property, to which for accuracy
198 he begs leave to refer; that it is not true that on or about June 25, 1878, this defendant had in his hands of money belonging to complainants $10,000 or any other sum; that he admits that he did charge and apply on the same for his services, as he had a right to do, at the rate mentioned in said eleventh paragraph of answer; and this defendant denies that he failed to account for any and all moneys remitted to him by said complainants or borrowed by him for them or for their benefit from the 1st of January, 1877, to June 25, 1878, or at any other time; but, on the contrary thereof, the defendant says that he has fully and properly paid out and disbursed all moneys of said complainants with which he is properly chargeable, and he has rendered full and correct accounts thereof to said complainants from time to time, and that on the 15th day of June, 1878, this defendant notified the complainants that he could no longer take charge of said real estate, as he was
199 removing from the city, and then and there exhibited to them his final accounts and surrendered his vouchers for money expended on their account; and this defendant denies each and every charge and averment in said twelfth paragraph of complaint, save and except as in this paragraph of answer stated and admitted; and the said defendant, further answering said bill of complaint,

denies that said complainants are entitled to the relief or any part thereof in their aforesaid bill of complaint demanded; and the defendant, further answering said complainants' said bill of complaint, says that said complainants ought not further to have or maintain, because said bill of complaint was not filed and exhibited against him within three years after said alleged cause of action or any of them therein mentioned occurred; and the said defendant prays the same advantage of his aforesaid answer as if he had
200 pleaded and demurred to the said bill of complaint.

And this defendant further says that the foregoing is a copy of his answer to the bill of said complainants as filed by them against him in the circuit court of the United States for the District of Indiana, which answer was made by him under oath, he having been so required to make answer by the said complainants in their said bill.

And for further answer to said bill of the said Sunderland & Hillyer and for answer to the matters specifically averred in said amendment and not embraced in the original bill, he answers as follows—that is to say:

That he is advised by counsel and believes and therefore says that the pretended agreements set out and alleged in the original bill and repeated in the said amendment, if such agreements had ever been made, would have been null and void because they
201 are contrary to public policy and because, as set out and alleged in said pleadings, are in law fraudulent and void, and this respondent claims the same benefit and advantage of this defense as if he had made the same by special demurrer.

2. That said complainant did not complain of or make known their alleged grievances within a reasonable time, but, having full and free access to the public land records of this District and having full knowledge of all and singular the matters and things connected with their business with said firm of Kilbourn & Latta, delayed proceedings for an unreasonable time, and until the said firm of Kilbourn & Latta had been dissolved, and until full settlement between the partners composing said firm had been made and concluded, and until the positions of said partners, respectively, had been changed, and until said firm had made other settlements and payments to and with other persons connected with said real
202 estate and said business, which could not now be rectified in the event of an allowance of the said claims and demands of said complainants or any part thereof.

3. That a long time before the filing of the original bill in this cause a full and true account was stated and settled in writing between the said firm of Kilbourn & Latta and the said complainants of all sums of money received by said firm from, for, or on account of the said complainants and of all matters and things mentioned and set forth in said original bill or in said original bill as amended as aforesaid and of all and every transaction between the said complainants and said firm of Kilbourn & Olmstead, and the said amount stated was by said firm *was* delivered to and was by said complainants kept and retained without objection; and that afterwards the

said complainants, after a careful examination of said amount stated and every item and particular thereof, which these de-
203 fendants aver, according to their best knowledge and belief, to be just, did approve and allow the same and did actually receive from said firm the sum of $2,715.58, the balance of the said account, which by said account appeared to be justly due to said complainants from said firm, and said complainants made, signed, and delivered a receipt therefor which this defendant submits is a full discharge and settlement of all the matters and things now brought forward as the subject of the said bill and amended bill; and at the time of such settlement the said complainants had full knowledge of all the matters and things so complained of; and this defendant claims the same benefit and advantage from and by reason of this defense as if he had interposed the same by plea.

4. That said pretended agreement set forth in the said bill as originally filed and as amended is alleged by said complainants to have been a contract for sale of lands, tenements, and hereditaments or an interest in or concerning lands in the District of Co-
204 lumbia, and that said pretended agreement was not to be performed within the space of one year from the alleged date of such pretended agreement; and it does not appear that said pretended agreement or any memorandum or note is or ever was made in writing or signed by the said firm or any one of them; and this defendant is advised and believes that according to the statute in such case made and provided parol evidence is not admissable to show or establish the same, and these defendants therefore claim the same benefit and advantage from the said statute, commonly called the "statute of frauds," as if they had specially pleaded the same or had demurred to the said bill of complaint.

5. That the cause or causes of action, if any there may be, arising to the plaintiffs on account or by reason of the said several allegations and complaints in the said paragraph contained did not occur within three years before the said original bill or the said amendments thereto were filed, and this allegation this defendant made in
205 bar of the said complainants' said original bill and the said several amendments, and as well to the complaint of said Sunderland individually as to the complaints of Sunderland & Hillyer, and pray that this defendant may have the same benefit therefrom as if he had formally pleaded the same.

6. In answer to the averments contained in the said amendments relating to square 156 the defendant says that it is not true that said firm was employed or that the said firm was requested by said complainants, as the agents of said complainants or otherwise, to make inquiries touching the property in said square 156, and he says that the allegations in said amendment made and set forth are wholly false except as hereafter positively admitted. This defendant admits that the said property at the time the sale was made to said Sunderland, Hillyer, and Stewart was incumbered to the extent of about $70,429.31, and that incumbrance was subsequently paid, and that the title to said property was vested in said defendant,
206 Hallet Kilbourn, as trustee for an association known as the

Real Estate Association, which said Real Estate Association was organized by the said firm of Kilbourn & Latta for purposes of speculation in real estate, and the business thereof has been fully wound up and settled long since. Long prior to the time of the purchase of said square 156 by said complainants and said Stewart the said property had been bought by said firm and had been conveyed to said Kilbourn, as trustee, and the deed had been (on the — day of ——, 1872) *only* recorded upon the land records of this District, and at the time of said sale said complainants well knew that the property had been so conveyed to said Kilbourn, and the said complainants well knew that said firm at the time negotiations for said purchase begun were the owners and sellers thereof, and knew they were selling the same for their own advantage and interest, as well as for the advantage of those interested with them in said property. He further says that the price at which said property
207 was sold to said complainants was reasonable and fair and was not more than the same was worth at that time, and he says that said complainants conducted the negotiations in person and relied exclusively, so far as this defendant knows, upon their own judgment. He avers that said complainants did not rely upon the judgment or recommendation of the said firm.

He admits that they sold said property at and for the sum of $90,429.90, and that said sum was an advance of about $20,000 upon the price originally by them paid or agreed to be paid for said square.

Touching the charges and averments in said amendment contained in relation to settlements or accounts with other members of said Real Estate Association, this defendant is advised by counsel he need not answer, because such does not concern the said complainants and are immaterial in this behalf and are scandalous, but he alleges that the said charges in said amendments contained
208 as to the failure to account to members of said Real Estate Association are maliciously false, as said complainants well knew when they made said charges.

Further answering the said averments in said amendments of said bill, this defendant says that the sum of $90,429.90 was the actual price for which property was sold to said complainants and said Stewart, and this defendant emphatically denies that there was any concealment by him or any one of said firm from said complainants or said Stewart of any matters, fact, or thing relating to any part of their business with said firm or of anything which they had a right to know or should have in fairness been told, and this defendant denies all and all manner of charges and averments of fraud and concealment in said bill and said amendment contained.

7. This defendant further says that he again urges the objection and relies upon the same; that the said William M. Stewart
209 is a necessary indispensable party to these proceedings, and he claims the same benefit and advantage of this objection as if he had specially demurred thereto for want of proper parties.

And, for answer to so much of said amended bill as relates to the separate complaints and demands of the said Sunderland, this de-

fendant, now and at all times hereafter *and* reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the complainant's said bill of complaint contains, for answer thereto or to so much and such parts thereof as the defendant is advised is or are material or necessary for him to make answer unto, answering, says:

1. The defendant, for answer to the first paragraph of said complainant's said bill of complaint, says that he has no sufficient information as to whether said complainant is a citizen of the
210 State of California to be able to admit the same, and he thereupon denies said paragraph and leaves said complainant to make such proof thereof as he may be advised is material or necessary for him to make.

2. The defendant admits that he is a citizen of the State of Indiana, as averred in the second paragraph of said complainant's said bill of complaint.

3. The defendant, for answer to the third paragraph of the said complainant's said bill of complaint, says that he admits that this defendant and Hallet Kilbourn and John F. Olmstead were, in the year 1872, doing business, under the firm name of Kilbourn & Latta, as real estate brokers, but he denies that said Olmstead was at that time a partner in said business with said Kilbourn & Latta, but that said Olmstead was to receive a share of the profits of the business of said firm as compensation for his services in and about the business of said firm.

211 This defendant explicitly denies that said complainant in the year 1872 or at any time employed said firm of Kilbourn & Latta as his agents, as alleged in said paragraph, to purchase unimproved real estate or any real estate in the city of Washington, and he denies that in consideration of commissions to be by said firm received on such purchases the said firm agreed to take charge of such real estate and manage the same, attend to the payment of taxes and the disbursement of such sums of money as might be necessary to be furnished by the complainant on such deferred payments as might exist on such purchases of real estate without any charge for payment of said taxes or making such disbursements and other services.

This defendant avers the truth to be that said firm sold to said complainant certain real estate for themselves and for other parties by whom they were employed; that after the purchases were made by said complainant he did employ the said firm to take
212 charge and management of said real estate, to look after the assessments, taxes, notes executed for deferred payments of the purchase price of real estate and the interest thereon; and in consideration of such services it was understood and agreed by and between said complainant and said firm that said complainant should pay to said firm of Kilbourn & Latta the sum of one per centum per annum on the purchase price of said real estate so purchased by said complainant or in the purchase of which said complainant had an interest for such period of time as said — should

have such care, management, and control as above stated. The defendant says that as early a- 1873 the said firm of Kilbourn & Latta notified and advised said complainant what their charges would be for such care and management of said complainant's said real estate, if the care and management of the same was left in their hands, and that such charges would be one per centum per annum on the purchase price of any and all of complainant's said
213 real estate so left in their charge and under their management and control; and the defendant avers that with the above understanding and agreement and under and pursuant to the same the said complainant left the said real estate in the charge and management of said firm of Kilbourn & Latta from the time the said parcels of real estate were by him respectively purchased until the 31st day of December, 1876, when said firm of Kilbourn & Latta was dissolved, and at said date last aforesaid the real estate of said complainant, then under the care and management of said firm, passed into the care and management of this defendant, with the knowledge, consent, and approval of said complainant, and this defendant continued to care for and manage said complainant's said real estate and that in which he had an interest from said 31st day of December, 1876, until the 15th day of June, 1878, under the same agreement and understanding as to compensation for this defend-
214 ant's services in and about the care and management of said complainant's said real estate, and this defendant explicitly denies that said firm of Kilbourn & Latta or this defendant ever violated their aforesaid agreement or that they or either of them ever fraudulently or wrongfully charged the complainant $5,973.33 or any other sum for their services in and about the care and management of said complainant's said real estate, and he explicitely denies all charges of fraudulent or wrongful conduct or concealment on the part of said firm or of this defendant contained in said paragraph of complaint, and he avers that all said charges of fraud, wrong, or concealment are gratuitously false and unfounded.

And this defendant avers that it is not true that said charge of $5,973.33, or any other charge, was concealed by said firm or by this defendant from said *said* complainants, but on the contrary thereof said complainant knew as early as the year 1873 that said
215 firm of Kilbourn & Latta and the defendant were to and would charge said complainant for said services, care, and management of his said real estate at the rate hereinbefore mentioned.

4. This defendant, for answer to the fourth paragraph of said complainant's said bill of complaint, says the charges therein contained are untrue and unfounded, and he denies the same. This defendant avers that the sole and only foundation for the false and unfounded charges contained in said paragraph of complaint is the following—that is to say: That on or about the date mentioned in said paragraph on- William M. Stewart, who then was or recently had been, as this defendant is informed and believes, interested with said complainant in said real estate or some part thereof, contemplated building an expensive private residence on a part of said real estate in the northwestern part of the city of Washington, by

means whereof it was thought by the complainant and others that the value of the residue of said complainant's real estate in
216 that part of the city would be greatly enhanced; that such project of building such residence said Stewart made contingent on the sale of the residence property then owned by him for the sum of $32,000, and said firm of Kilbourn & Latta were employed to find a purchaser therefor at that price; that said Stewart desired that his said residence property should net him $32,000 over and above the commissions of the said firm of Kilbourn & Latta, and it was also a part of the same arrangement that said complainant should loan said Stewart the sum of $35,000 to further aid him in building his proposed residence; that said complainant, for reasons of his own, desired to get out of loaning said Stewart said sum of money, and at the same time that the project of said Stewart in building said residence should not miscarry; that said complainant then proposed to said firm of Kilbourn & Latta, if they would procure the loan to said Stewart from some other party, that he, the said complainant, would pay said firm of Kil-
217 bourn & Latta the sum of $1,000, which would be the amount due them for commissions on the sale of said Stewart's residence; that said firm of Kilbourn & Latta did make sale of said Stewart's residence at $32,000 and did procure the loan of $35,000 to be made to said Stewart by one George Taylor, and in pursuance of said agreement said firm did for their aforesaid services charge the complainant with said sum of one thousand dollars, as they had the right to do.

And the defendant further avers that each and every charge made against said complainant and each and every sum of money applied in payment of such charge for the care and management of the said complainant's said real estate was and were fair, just, and reasonable and were under and in compliance with the agreement and understanding more specifically set forth in the third paragraph of this answer, to which reference is here made, as to the charges which should be made for such care and management of said com-
218 plainant's said real estate; and this defendant avers that the sums so agreed to be paid and so charged were no adequate compensation for the annoyance, trouble, and time of the said firm and this defendant; that said complainant purchased on his own account or with other parties over $600,000 worth of real estate; that there were incumbrances on said real estate which were assumed and deferred payments of the purchase-money to the amount of about $400,000 at one time and at all times amounting to more than $100,000; that this defendant became liable for sums of money on behalf of said complainant and at his instance and request, exceeding at times $300,000; that in the fall of 1873 a great panic prostrated the financial and business interests of the country, and as a result said complainant's real estate became greatly depreciated in value, so much so that if then forced on the market it would not have realized sufficient to pay off the liabilities incurred by this defendant on account
219 thereof; that said complainant for a long period of time be-

tween the fall of 1872 and June 15, 1878, failed and neglected to furnish any money, on request, as he had agreed to do, and at other times he would only furnish small and inadequate sums of money to meet the liabilities so incurred by this defendant on account of said complainant as aforesaid; that by reason of such failure and neglect of said complainant to furnish money as he had agreed to said firm and the defendant were compelled to and did expend much larger amounts of time and were put to much greater annoyance and trouble in caring for and managing said complainant's said real estate and saving the same from forced sale than the said firm and he would have been put to but for the default and failure of said complainant to comply with his said agreement to furnish money as needed and requested to meet the aforesaid liabilities so incurred by this defendant on account of said complainant's said real
220 estate; and this defendant avers that by reason of the said failure of said complainant to furnish said firm and this defendant with money as needed and requested to meet said liabilities the credit of this defendant was greatly injured; that he was harassed with duns, protests, and threats of suit growing out of said complainant's said failure and default, and complainant's said failure and default compelled this defendant to lose and he did lose a great amount of time, and he was put to great trouble and expense by reason thereof, so that the business of said firm and this defendant's business were injured and suffered great loss and detriment; and this defendant avers that no sum of money would induce him again to undergo the labor or peril and suffer the anxiety and annoyance to which he was put by said complainant's failure and default to furnish money to meet said liabilities, as he had agreed to do; and this defendant avers that he
221 is in equity and good conscience, by reason of the premises aforesaid, entitled to the sum of $25,000 more than the several sums mentioned in said complainant's said bill of complaint, and he asks that by the decreeof this honorable court he be awarded said sum of money.

5. And this defendant, for answer to the fifth paragraph of said complainant's said bill of complaint, says that he denies all the material allegations in said paragraph of said bill of complaint contained, and says that in the sense and manner in which said allegations are stated therein they and each of them are untrue and unfounded.

This defendant says that it is true that the defendant did charge against said complainant the sums or about the sums mentioned in said fifth paragraph of complainant's said bill of complaint, and defendant avers that said sums were charged and retained on account of the services of said firm of Kilbourn & Latta and this defendant under the agreement and understanding and on account of the services set forth in the third and fourth paragraphs of this answer,
222 and the benefit of which said paragraphs of answer this defendant prays he may have as an answer to the fifth paragraph of said complainant's said bill of complaint as fully as though

the same were here repeated again and at large in this paragraph of answer.

And this defendant says that it is not true that said firm and this defendant did not bestow any care or management over said property except in the partial payment of taxes thereon and the payment of a part of the principal and interest on the incumbrances on said real estate out of funds furnished by the said complainant; that on the contrary thereof it is true that the said firm and this defendant did bestow the care and management over said property and render the services in and about the same set forth and alleged in the third and fourth paragraphs of this answer; and this defendant says that, not having the books of said firm of Kilbourn & Latta before him—the same being in Washington, D. C.—he cannot
223 say if said firm ever made any sales of real estate for said complainant and charged commissions as agents in making such sales, but on his best recollection and belief he denies all and singular the averments of said bill touching such sales by said firm, and says that such charge is untrue and unfounded; and this defendant says, though it is true that he made a few small sales of real estate of the complainant during the year 1878, while he had charge of said real estate, he emphatically denies that he ever charged to complainant any commissions whatever on account of such sales so made by him.

(7.) And this defendant, for answer to the seventh paragraph of said complainant's said bill of complaint, says that he admits that said Kilbourn & Olmstead are citizens and residents of the District of Columbia, but he avers that before the exhibition of said complainant's said bill of complaint in this behalf against him the said complainant had exhibited his said bill of complaint in the supreme court of
224 the District of Columbia, in equity, against said Kilbourn & Olmstead, and had served process therein upon them for the same identical matters and things in the said complainant's said bill of complaint exhibited against this defendant; that said complainant is prosecuting his said complaint against said Kilbourn and Olmstead in said supreme court for the matters and things aforesaid; that the books, papers, and memoranda relating to said transactions set forth in complainant's said bill of complaint are in the possession of said Kilbourn & Olmstead, in the city of Washington and within the jurisdiction of the said supreme court, and this defendant respectfully submits that the complainant ought not to further prosecute this cause until the final determination of the aforementioned cause pending in said supreme court.

And said defendant says that said complainant ought not to maintain his aforesaid bill of complaint, because said plaintiff's
225 said causes of action did not accrue within three years next before the filing of his said bill of complaint.

And the said defendant, further answering, denies that said complainant is entitled to the relief or any part thereof in the said bill of complaint demanded.

And this defendant prays the same advantage of his aforesaid

answer as if he had pleaded or demurred to the said bill of complaint.

And this defendant prays leave to be dismissed hence with his reasonable costs and charges in this behalf most wrongfully sustained.

And this defendant further says that the foregoing answer to the said separate demands of the said Sunderland is a copy of his answer under oath to the said separate bill of the said Sunderland in the said circuit court for the district of Indiana, he having been required by said bill to make answer thereto under oath.

SHELLABARGER & WILSON,
Sol'rs for Latta.

226 *Replication to Answer. Filed May 25, 1885.*

In the Supreme Court of the District of Columbia. In Equity.

THOMAS SUNDERLAND and C. J. HILLYER, Complainants,
vs.
HALLET KILBOURN, J. F. OLMSTEAD, and J. M. LATTA, Defendants. } No. 7764.

The complainants hereby join issue with the defendants, J. F. Olmstead and Hallet Kilbourn.

THOMAS SUNDERLAND AND
C. J. HILLYER,
By J. H. RALSTON, *Their Solicitor.*

227 *Answer of Kilbourn & Olmstead to 2d Am'd'd Bill. Filed June 2d, 1882.*

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
JAMES M. LATTA, HALLET KILBOURN, and JOHN F. OLMSTEAD. } Equity No. 7764.

Answer of Kilbourn and Olmstead to 2nd am'd't.

The joint and several answer of the above-named defendants, Hallet Kilbourn and John F. Olmstead, to the matters and things set fourth in the second amended bill of complaint of the above-named complainants.

The said defendants, answering said second amended bill, which was filed on the 22d day of March, 1882, say as follows:

First. As to the averments contained in the paragraphs therein numbered from one (1) to twelve (12), inclusive, they say that they

have fully answered them by their answer to the original bill
228 and by their answer to the original bill as first amended, and they here specicially refer to said two answers (filed, respectively, on the 1st day of October, 1881, and on the 6th day of April, 1882), and make them a part hereof, and pray that said two answers may be read and considered as a part of this answer.

Second. As to the averments contained in the paragraphs numbered thirteen (13) and fifteen (15) in said second amended bill, they say they are advised by counsel that they need not answer, because the same refer exclusively to the defendant, James M. Latta.

Third. Answering the averments contained in paragraph numbered fourteen (14) of said bill, as secondly amended, they say that it is true that said Sunderland, some time about the — day of ——, 187–, employed these defendants and said Latta (being the firm of Kilbourn and Latta) for a reasonable compensation to take care of and
229 manage a large quantity of property, consisting of many different tracts of land, and that they did faithfully and diligently care for the same until about the — day of ——, 187–, and did charge the said Sunderland therefor the sum of $5,973.00, which, they aver, was a reasonable and fair charge and compensation for the labor, skill, and diligence expended by said firm on and about said property and the interest of said Sunderland in reference to the same. These defendants deny that they or any member of said firm concealed in any manner or degree whatever the facts or circumstances connected with the said business, and they assert and allege the truth to be that said Sunderland was by said firm kept fully advised of the condition of his accounts at all times, and had free access to all books and papers and all charges therein relating to the matters and things mentioned in said paragraph.

230 They deny all charges of fraud and wrong made against them in said paragraph.

Further answering said paragraph, these defendants say that Sunderland did not complain of or make known his alleged grievances within a reasonable time, but, having full and free access to the books and accounts of said firm relating to his business and having full knowledge of all and singular the matters and things connected with his said business with said firm of Kilbourn & Latta, delayed proceedings for an unreasonable time, and until the said firm of Kilbourn & Latta had been dissolved, and until full settlement between the parties in said firm had been made and concluded, and until the positions of said partners respectively had been changed, and until said firm had made other settlements and payments
231 to and with other persons connected with said business, which could not be rectified in the event of an allowance of the said claims and demands of said Sunderland or any part thereof.

Further answering said paragraph, these defendants say that a long time before the filing of the original bill in this cause a full and true account was stated and settled in writing between the said firm of Kilbourn and Latta and the said Sunderland as well as Sunderland and Hillyer of all sums of money received by said firm from, for, or on account of the said Sunderland and Sunderland and Hillyer,

and of all matters and things mentioned and set forth in said paragraph of the said bill as secondly amended as aforesaid, and of all and every the transactions between the said Sunderland individually as well as Sunderland and Hillyer and said firm of Kilbourn and
232 Latta, and the said account stated was by said firm delivered to and was by said Sunderland kept and retained without objection; and that afterwards the said Sunderland, after a careful examination of said account stated and every item and particular thereof, which these defendants aver, according to their best knowledge and belief, were just, did approve and allow the same, and did actually receive from said firm the sum of $2,715.58, the balance of the said account, which by said account appeared to be justly due to said Sunderland as well as Sunderland and Hillyer from said firm, and said Sunderland, for himself and for Sunderland and Hillyer, made, signed, and delivered a receipt therefor, which, these defendants submit, was a full discharge and settlement of all the matters and things now brought forward as the subject of the said amendment to
233 said original bill. At the time of such settlement the said Sunderland had full knowledge of all the matters and things so complained of, and these defendants claim the same benefit and advantage from and by reason of this defense as if they had interposed the same by plea.

That the cause or causes of action, if any there may be, arising to the plaintiffs on account or by reason of the said several allegations and complaints in the said paragraph contained did not accrue within three years before the said original bill or the said amendments thereto were filed, and this allegations these defendants make in bar of the said complainants' said original bill and the said several amendments, and as well to the complaint of said Sunderland individually as to the complaints of Sunderland and Hillyer, and pray that they, these defendants, may have the same benefit therefrom as if they had formally pleaded the same.

HALLET KILBOURN.
JOHN F. OLMSTEAD.

234 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

Personally appeared before me, William P. Young, a notary public in and for the District aforesaid, Hallet Kilbourn and John F. Olmstead, who, being first duly sworn, each for himself on his oath deposes and says that he has read the answer by him above subscribed, and that he knows the contents thereof, and that the facts therein stated upon personal knowledge are true, and that the facts therein stated upon information and belief he believes to be true.

HALLET KILBOURN.
JOHN F. OLMSTEAD.

Subscribed and sworn to before me, in said District, this 22d day of May, A. D. 1882.

[SEAL.] WM. P. YOUNG,
Notary Public.

ENOCH TOTTEN, *Sol'r.*

235 *Notice of Motion for Pro Confesso. Filed Jun. 6th*, 1882.

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND and HILLYER
vs.
OLMSTEAD, KILBOURN, and LATTA. } No. 7764.

To Messrs. Shellabarger & Wilson, solicitors for def't, J. M. Latta:

You are hereby notified that on Tuesday, June 6th, 1882, at the opening of said court or as soon thereafter as same can be heard, the complainants will move the court for an order requiring the def't, J. M. Latta, to forthwith appear and answer the amended bill of complaint in accordance with the *the* stipulation heretofore made and on file in said cause, and that on his failure so to do the default of said Latta shall be entered and the bill, as to him, be taken as confessed.

Washington, D. C., June 3d, 1882.

J. H. RALSTON,
Compl'ts' Solicitor.

236 *Replication to Answer of Def't Latta. Filed Jun. 16th*, 1882.

In the Supreme Court of the District of Columbia. In Equity.

THOMAS SUNDERLAND and C. J. HILLYER
vs.
HALLET KILBOURN, JOHN F. OLMSTEAD, and JAMES M. LATTA. } No. 7764.

The plaintiffs hereby join issue with the defendant, James M. Latta.

J. H. RALSTON,
Plaintiffs' Solicitor.

Order Fixing Time for Taking Test'y. Filed June 24, 1882.

In the Supreme Court of the District of Columbia. In Equity.

THOMAS SUNDERLAND and HILLYER
vs.
HALLET KILBOURN, LATTA, and OLMSTEAD. } No. 7764.

On motion of complainants, it is ordered that the taking of testimony for the def'ts herein shall be completed within twenty-
237 five days from the date of this order—that is, on or before the 23d day of July, 1882, and that the complainants shall

be limited to fifteen days after the expiration of said period for the completion of their testimony, and that neither of said periods shall be enlarged except by order of the court on good causes being shown and upon notice to the opposite party.

June 23d, 1882.

A. B. HAGNER,
Asso. Justice.

Replication to Answer to 2d Amended Bill. Filed July 7th, 1882.

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND and HILLYER
vs.
KILBOURN, LATTA, and OLMSTEAD. } No. 7764.

The complainants hereby join issue with the defendants, Kilbourn and Olmstead.

J. H. RALSTON,
Solicitor for Comp'ts.

238 *Motion to Vacate Order and Aff'd't in Support. Filed Aug. 30th*, 1882.

In the Supreme Court of the District of Columbia, this 30th Day of August, 1882.

SUNDERLAND and HILLYER
vs.
HALLET KILBOURN *et al.* } Equity No. 7764.

And now come the said defendants, Hallet Kilbourn and John F. Olmstead, by their counsel, and move the court to vacate and set aside the order of this court, passed in the above-entitled cause on the 24th day of June, 1882, limiting the time for taking evidence in said cause, and to strike out of the record and proceeding the evidence taken by the said complainants in pursuance of said order and in support of the second amended bill by them filed in this cause, for the reasons following, to wit:

1. Said order was improvidently and improperly granted, no replication to the answer of the said defendants Kilbourn and Olmstead to the second amended bill having been filed by com-
239 plainants, and there being no issue thereon at the time of granting and passage of said order.

2. That the evidence taken by complainants under said order was taken in the absence of counsel for the said defendants, said counsel having been peremptorily and continuously engaged in the trial of a cause in the criminal term of this court at the time said order was made and during the whole period within which said evidence was taken, and a long time prior thereto.

ENOCH TOTTEN,
Sol'r for Kilbourn and Olmstead.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

John F. Olmstead, being first duly sworn, deposes and on his oath says that he is one of the defendants in the above-entitled cause; that it appears from the record and proceedings in
240 said cause, as he is informed and believes, that the answer of the defendant Kilbourn and of this affiant to the second amended bill of complaint of said complainants was filed on the second day of June, 1882, and that no replication was filed thereto by said complainants until the seventh day of July, 1882, and that there was no issue thereon at the time of the granting of the order passed in this cause on the 24th day of June, 1882.

This affiant further says that he is informed and believes and therefore deposes that the evidence taken by said complainants since the passage of said order was taken in the absence of counsel for said defendants Kilbourn and Olmstead, and also of counsel for defendant Latta, and that said counsel were at the time of the taking thereof occupied exclusively and continuously in the trial of a cause in the criminal term of this court and unable to attend the
241 examination in this cause pending the session of said criminal court, and the counsel for complainants were notified of such inability to attend on the part of counsel for defendants, but that, notwithstanding such notification, counsel for complainants insisted upon the taking of such evidence and did take the same at unreasonable hours and in the absence of opposing counsel; that if a reasonable time shall now be granted by the court the evidence in behalf of the defendants can be closed and without any unreasonable delay.

JOHN F. OLMSTEAD.

Subscribed and sworn to before me this 30th day of August, 1882.

[SEAL.] B. F. STEIGER,
Notary Public.

242 *Motion to Vacate Order Limiting Time to Taking Testimony. Filed Sep.* 2, 1882.

In the Supreme Court of the District of Columbia, Sept. 2d, 1882.

SUNDERLAND and HILLYER }
vs. } Equity No. 7764.
HALLET KILBOURN *et al.* }

Now comes the said defendant, James M. Latta, by his counsel, and moves the court to vacate and set aside the order of this court, passed in the above-entitled cause on the 24th day of June, 1882, limiting the time for taking the evidence in said cause, and to strike from the record the evidence taken by the said complainants in pursuance of said order, and to grant time to the said defendant, James

M. Latta, to take testimony in said cause, for the reasons following, to wit:

1st. Said order was improvidently and improperly granted in this, to wit:

That at the time of the granting of said order the issues had
243 not been joined in said cause, no replication to the answers of the defendants Kilbourne & Olmstead to the second amended bill having been filed by the complainants at the time said order was granted, as will more fully appear by reference to the records of the court in said cause.

2d. That the evidence taken by the complainants under said order was taken in the absence of the counsel for the defendants Kilbourn & Olmstead, the said counsel for the said respective defendants having been necessarily and continuously engaged in the trial of a cause in the criminal term of this court from before the time said order was granted until this date, and being still so engaged, said cause not being yet concluded and said counsel being so necessarily and continuously engaged the whole period
244 within which said evidence was taken and for a long time prior and subsequent thereto.

3d. Because, by the terms of the agreement under which the said Latta was made a defendant in this cause, certain suits pending in the circuit court of the United States for the district of Indiana, wherein the said complainants in this cause were complainants and the said Latta was defendant, and wherein the said Thomas Sunderland was complainant and the said Latta defendant, which said suits involved the same subject-matter as are involved in this cause under the original bill and amendments thereto, were to be dismissed, as will more fully appear by the stipulation in that behalf on file in this cause, but the same were not dismissed until the —— day of ——-, 1882.

And that pursuant to said stipulation the counsel for the said defendant Latta applied to the said complainant Hillyer, who
245 is also one of the solicitors for the said complainants, for a stipulation authorizing the transmittal of the testimony taken on behalf of the defendant Latta from the said circuit court of the district of Indiana to this court, but the said Hillyer refused to enter into any such stipulation and has not yet assented thereto, but on the 2d day of September tendered to the counsel for the defendant Latta a stipulation, which is hereto attached, marked "A," and has made no offer other than the last-named stipulation, in compliance with the said stipulation herein first mentioned, other than that referred to and named in said stipulation marked "A."

SHELLABARGER & WILSON,
Att'ys for J. M. Latta.

"A."

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND and HILLYER
vs.
KILBOURN, LATTA, and OLMSTEAD. } No. 7764.

246 It is hereby stipulated that if there be on file in the clerk's office of the United States circuit court for the district of Indiana any deposition or paper purporting to be a deposition of James M. Latta, which the defendants claim the right to use as evidence in the present case, a copy thereof, duly certified to be a copy by the clerk of said circuit court, may for all purposes in this action be used as a substitute for the original, and if offered in evidence by the defendants or either of them shall be subject only to such objections as might be made to the original if produced and offered by them.

J. H. RALSTON,
Complainants' Solicitor.

Notice of Motion to Close Test'y. Filed Sept. 5th, 1885.

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND and HILLYER
vs.
KILBOURN, LATTA, and OLMSTEAD. } No. 7764.

To Messrs. Shellabarger & Wilson and Enoch Totten, Esq., solicitors for defendants:

247 You are hereby notified that at the opening of said court on the 5th day of September, 1882, or as soon thereafter as the same can be heard, the complainants will move for an order directing the special examiner, W. T. S. Curtis, Esq., to forthwith certify and file with the clerk all depositions in said cause which have been taken before him on behalf of either of the parties, and that for this purpose he require the defendant, J. F. Olmstead, without further delay, to sign his deposition taken therein on behalf of the defendants, and in case of his refusal that he, the said examiner, sign and certify the same; that with the filing of said depositions the testimony in said cause be declared closed, and the clerk directed to make publication thereof in accordance with the practice of the court.

J. H. RALSTON,
Complainants' Solicitor.

WASHINGTON, D. C., *August 29th*, 1882.

248 Served on Col. Enoch Totten on the above date.

WASHINGTON, D. C., *August* 30, 1882.
Served on Shellabarger & Wilson on the above date.
J. H. RALSTON,
Comp'ts' Sol.

Affidavit as to Service of a Copy of Am'd'd Bill on Counsel for Def'ts. Filed Sep. 13*th*, 1882.

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND and HILLYER, Comp'ts,
vs.
KILBOURN, OLMSTEAD, and LATTA, Def'ts. } No. 7764.

J. H. Ralston, being first duly sworn, on his oath deposes and says—

That he is one of the solicitors for complainants in the above-entitled cause; that on the 22d day of March, 1882, he filed in the clerk's office of said court an amended bill in said cause, and on the same day served a copy thereof upon Judge J. M. Wilson, one
249 of the solicitors for said defendant Latta; that within a short time after said day, and to the best of his recollection and belief within two weeks from said 22d day of March, he served a copy of said amended bill of complaint upon Enoch Totten, solicitor for said defendants Kilbourn and Olmstead.

Washington, D. C., Sept. 13, 1882.

J. H. RALSTON.

Subscribed and sworn to before me by the said J. H. Ralston this 13th day of September, A. D. 1882.

R. J. MEIGS, *Clerk, &c.*,
By R. J. MEIGS, No. 3,
Ass't Clerk.

Order Extending Time to Take Testimony. Filed Sept. 13, 1882.

Supreme Court of the District of Columbia.

CURTIS J. HILLYER *et al.*
vs.
KILBOURN *et al.* } No. 7764.

Order enlarging time to take testimony, &c.

250 This cause having come on to be heard on the motion of the complainants to — that the testimony be —, &c., and on motion of the defendants Kilbourn, Olmstead, and Latta to strike out certain depositions, &c., and counsel having been heard on both sides, it is, this 13th day of September, 1882, ordered that the time within which the said defendants shall conclude the taking of their

testimony be, and the same is hereby, enlarged and extended to and to include the 23d day of October, 1882, and that the plaintiffs then have ten days for taking rebutting testimony.

It is further ordered that the defendants be, and they are hereby, authorized to recall and cross-examine such witnesses examined by the complainants as have been examined since June 24th, 1882, such depositions, however, to stand as such in the cause as though the same had been taken after the filing of a replication to the
251 answer of the defendants to the second amended bill, the replication filed on the 7th of July, 1882, to be considered as having been entered before the passing of the order of the 23d of June, 1882.

A. B. HAGNER,
Asso. Justice.

252 *Testimony of J. M. Latta in the Circuit Court of Indiana. Filed Oct.* 11, 1882.

THE UNITED STATES OF AMERICA,
The District and State of Indiana:

In the Circuit Court of the United States for the District and State of Indiana.

CURTIS J. HILLYER *et al. vs.* JAMES M. LATTA.

The plaintiffs in the above-entitled cause are hereby notified that on the 22d day of March, 1882, at the office of Charles Etheridge, Esq., a notary public at New Albuquerque, in the Territory of New Mexico, between the hours of 8 o'clock a. m. and 6 o'clock p. m. of said day, before said Charles Etheridge, Esq., notary public, or some other officer authorized to take depositions, the defendant will proceed to take the deposition of James M. Latta, as witness in his own behalf, to be used in evidence on the trial of said cause, and will, if necessary, continue said taking from day to day until said depositions are completed.

Dated March 1st, 1882.

BAKER AND MITCHELL,
Defendant's Attorneys.

We acknowledge service of the above notice and waive dedimus, and it is hereby agreed that the evidence taken pursuant to the above notice may be used on the trial of each of the causes in the above-entitled court in which Thomas Sunderland and Curtis
253 J. Hillyer or either of them are parties plaintiff and James M. Latta is defendant, so far as relevant, material, and competent in each case respectively.

Dated March 3d, 1882.

McDONALD — BUTLER,
Sol'rs for Compl't.

TERRITORY OF NEW MEXICO, *County of Bernalillo:*

The deposition of James M. Latta, a witness produced, sworn, and examined on the twenty-second day of March, in the year of our Lord 1882, between the hours of eight o'clock a. m. and six o'clock p. m. of that day, at my office, in the town of Albuquerque, county of Bernalillo and Territory of New Mexico, in a certain cause now pending in the circuit court of the United States for the district and State of Indiana, wherein Curtis J. Hillyer and others are complainants and James M. Latta respondent, on the part of the respondent and in accordance with the foregoing stipulation.

JAMES M. LATTA, of lawful age, being produced, sworn, and examined on the part of the respondent, deposeth and saith:

254 JAMES M. LATTA, being sworn, deposeth as follows:

Q. What is your residence, age, and occupation?

A. Lawful age; residence, Goshen, Indiana, but am temporarily residing in New Mexico; occupation, farmer.

Q. State if you are the defendant in the case of Curtis J. Hillyer *et al. vs.* J. M. Latta.

A. I am.

Q. You will please state whether or not you were engaged in the real estate business in Washington city in the years A. D. 1871 and '2 to 1878.

A. I was, to the end of the year 1878.

Q. What was the name of your firm?

A. The firm name was Kilbourn & Latta.

Q. State whether or not you had any transactions occurring out of your real estate business with the complainants in this suit.

A. We sold to them large quantities of property during the years 1872 and part of 1873 as brokers and individually.

Q. You will state whether or not you were the brokers of Thomas Sunderland, C. J. Hillyer, or William M. Stewart.

A. We were not.

255 Q. Go on and state what real estate, if any, the complainants bought from your firm or from you and the circumstances connected with the purchases.

A. I am unable to give a description of the various pieces they bought of us as brokers, but it aggregated, I think, in the neighborhood of a little over five hundred thousand (500,000) dollars. They bought of the firm various pieces of property aggregating, perhaps, something like one hundred thousand (100,000) dollars—property which the firm owned and sold them.

Q. In the purchase of this real estate through your firm as brokers for them did you act as agent for the vendors or vendees?

A. We acted invariably for the vendors and received our commissions from them.

Q. You will state whether or not the complainants relied upon your judgment or advice in the purchase of this real estate and whether or not they offered to pay you a consideration for the same or for your services in purchasing this real estate.

A. Whether they relied on our judgment or not I cannot say. I know that they examined each piece of property for themselves and determined for themselves whether they would purchase it or
256 not. They never paid us anything for a commission or for our judgment or experience in the purchase of this real estate.

Q. Did the firm of Kilbourn and Latta direct the attention of the complainants to various pieces of property in said city which said firm had for sale, and did the complainants purchase any of these pieces of property, and, if so, what proportion of them?

A. The firm did point out and call their attention to a large amount of property the firm had for sale in the northwestern portion of the city, and we had, in view of sale, made maps and plats of nearly the whole of it—got up transfer books by which we were enabled to determine the ownership of every piece of property in that portion of the city. The firm entered into this with a view of purchasing large quantities of property in that section in 1868, and obtained property for sale, and thereafter held almost the whole of it for sale on their books.

Q. You were then the agents for the owners of this property when negotiations commenced between you and the complainants?

A. We were.

257 Q. In what manner were these sales brought about to the complainants?

A. We called their attention to these various pieces of property, and from that list they selected certain pieces of property which they wanted to buy. We communicated to them the prices at which the property was left with us for sale and the terms; they then made their offer for the property, and when the offer was accepted we closed the sale.

Q. Who paid the commissions on those sales?

A. The vendors, invariably.

Q. State who first spoke of the purchase of square 115—that is, whether the complainants or Kilbourn and Latta.

A. The firm of Kilbourn and Latta called their attention to square 115 about some time in May—perhaps the latter part of it—in 1872.

Q. At that time who owned square 115 and what was the nature of the ownership?

A. At that time Kilbourn and Latta had a contract for the purchase of square 115. The contract, I think, was dated about the first of August, 1871. The firm had been in negotiation for the square for several years. It was owned by the Institution for Colored
258 Children and held by trustees. The property had been on our books for sale, well, for perhaps three (3) years and no price affixed. These trustees were resident in various parts of the northwestern part of the United States—Massachusetts, New York, and other places; some in the District of Columbia. As I said, in August, I think it was in 1871, we finally made a bargain for this property of forty thousand (40,000) dollars for the benefit of the firm of Kilbourn and Latta, but it was not till about the first of May, 1872, that we got the final con-

sent, either in writing or by their present of all the members there to the confirmation of the sale, of all the trustees except one. I think we made a deposit on the property in August, 1871. Perhaps it was in April that we got this consent; though I remember that we sent a man to New England and New York to get the deed accepted or their consent, I forget which. The first deed that was executed had a defect in it, and we had a new deed prepared and the whole thing gone over again, and that was not consum-
259 mated until some time in May. After we had secured the property, but perhaps before we got the deed to it (it being ten (10) years since, I cannot remember distinctly), we called the attention of Sunderland and Hillyer to this square and offered it to them at sixty-five thousand (65,000) dollars. That offer was accepted by them, I should think, the same day, for I think either that day or the next E. C. Ingersoll, finding out that we had the property, inquired what we asked for it, and, upon being told that we offered it to Sunderland and Hillyer for sixty-five thousand (65,000) dollars, offered us seventy thousand dollars for it, but having given the refusal to them we had to decline the offer.

Q. Were the complainants fully aware of the price that the firm of Kilbourn and Latta paid for square 115?

A. They were; I told them myself. They told me that no intervening deed was necessary to show that it had passed through our hands, the title being taken in the name of James M. Latta, trustee, without expressing for whom the trust was and the deed was taken.

Q. How was the consideration for this purchase paid?

260 A. By the complainants. I think they paid twenty thousand ($20,000) dollars in cash and authorized notes to be given for thirteen thousand (13,000) dollars—6,500 in one year and a like amount in two years—and we had arranged in our purchase of the property for $32,000 of the money to remain on it for six years at six per cent. interest. Geo. Taylor was originally to have been interested with us in the property, but by the time the sale was confirmed he had himself bought all the property that he cared to purchase, and therefore he gave me written authority, which I presume is in the office of Kilbourn and Olmstead, to transfer the title of this property to Mess. Sunderland and Hillyer and hold it for them; the two (2) notes for $6,500, which were in consequence made payable to Geo. Taylor and by him assigned to Kilbourn and Latta.

Q. Did Sunderland and Hillyer know prior to the closing of their purchase of square 115 that you had been offered more for it than they were to pay you?

A. They did; at least I told them of the offer and told
261 them who made it, and told them that if they chose they could make five thousand (5,000) dollars on the property and have it made directly to Ingersoll instead of to them, which they declined to do.

Q. Please state the facts in relation to the purchase and sale of lot 17, in square 158.

A. Lot 17, in square 158, was bought by the firm of Kilbourn and Latta, of Senator Morgan, of New York, for about five thousand

(5,000) dollars cash; we called the attention of Sunderland and Hillyer to this lot, and offered it to them at 50c. per foot, and told them that we owned it; they bought it of us at that price, which amounted to something more than eight thousand (8,000) dollars.

Q. Did they offer to purchase any other property in square 158, and, if so, at what price?

A. They said to us at that time that they would buy any lot in square 158 at 50c. per foot, and we sold them, about that time, other lots in that square that was owned, comprising lot 8 and, I think, a part of 9 and 10 and part of 21, in sqr. 158, for the price of 50c. per foot.

Q. What other property did you sell Sunderland and Hillyer and Wm. M. Stewart that your firm owned?

262 A. I think we sold them one or two lots in square 69. I do not remember the numbers nor the value. Square 155 was owned by the Bancroft estate, and was bought by Burgess and Arms. Burgess and Arms sold that square to Chas. A. Eldridge. My recollection is, but I am not certain of it, that it was bought by him on joint account with the firm of Kilbourn and Latta, and Sunderland and Hillyer bought that square of Eldridge for something of an advance. I think that Eldridge's part of the profits, for which we gave him a check, was (2) thousand dollars. Whether the firm got more than its commission out of the operation I am not prepared to say. If they did, then they were with Eldridge in the purchase on joint account. The price paid Burgess and Arms for that property was 13,100 dollars, and that in cash, and the assumption of a deed of trust on the property for $64,550.65, making a sum total of seventy-seven thousand six hundred and fifty dollars and 65 cents, and that was the true consideration, as in the account current furnished by Kilbourn and Latta to Sunderland and Hillyer they are only charged with $72,930.30, indicating that we did not
263 charge Sunderland and Hillyer enough by $4,680.35.

Q. In paragraph 7 of complainants' bill they allege a purchase of lots in square 158 for which they were charged more than the firm of Kilbourn and Latta paid for it. State the facts in regard to this purchase.

A. This property was owned by Kilbourn and Latta, bought for themselves, and they were the vendors to Sunderland and Hill in those sales to them, and in which instance Sunderland and Hill were told who the owners were, and they knew at the time that they were buying property from the firm of Kilbourn & Latta.

Q. A piece of property, not mentioned or enumerated in the complaint of the plaintiffs, situated in square 156, was owned by the Real Estate Association, in which Kilbourn and Latta were interested. That property, for which they paid $90,000, was also sold to them by the firm, they paying a profit on it of about twenty-seven thousand (27,000) dollars. They were fully advised that the firm were interested in that, too, at the time of the purchase.

Q. Where were the complainants during the time of the ne-
264 gotiation and completion of these purchases?

A. They were in the city of Washington and in our office

daily—about four (4) hours every day—where they talked over and proposed to purchase various pieces of property; fully discussed the merits of the property and desirability of purchasing it, and ordinarily it was there they determined whether they would purchase a property or not, and generally upon a full consultation of the three of them, including Stewart.

Q. State what the business of the complainants was and what they were engaged on in Washington at that time, aside from their business.

A. Stewart was United States Senator from Nevada; Hillyer was an eminent lawyer there, and that winter, I think, was there for the purpose of attending to some important business. Among others, I heard him say he got fifteen thousand (15,000) dollars for arguing some Utah case, and was agent of a special case from the Pacific coast. Sunderland was understood to be a man of fine legal talent and also a lawyer there in the interest of the Bank of Cali-
265 fornia as against the New Idrea Mining Company. Stewart was also a man eminent in the legal profession, as well as being a member of the United States Senate.

Q. What was the practice of the office upon making sales—as to statement of sales—and the terms of them?

A. The office invariably furnished the vendor and vendee each with a printed statement of the sale and the purchase, setting forth the terms and giving a description of the property, &c., so that both the seller and purchaser was thereby furnished with a history and record of the sale and the purchase to carry with them.

Q. Was this practice followed in the case of these sales?

A. Invariably.

Q. State what the complainants did in regard to the examination of deeds, abstracts, and the property itself.

A. When the papers were drawn and the abstract furnished the office (which was always furnished by the attorney selected by the purchaser)—when they were ready and the deed of trust and notes prepared—they were always submitted to the complainants
266 for their examination and approval, and no transaction in which they were interested in any way, that I remember of, was an exception to that rule, and they never bought a piece of property, that I know of, that they did not give it their personal examination and exercise their judgment as to whether it was wise to buy or not, and they probably did ask our advice as to the desirability of purchasing property generally, but, invariably, where the property belonged to the firm of Kilbourn and Latta and where Kilbourn and Latta were in any way interested in the property, they were advised of the fact and consulted with others outside of the office about the desirability of purchasing it, so that they were in nowise influenced in the purchase by the firm, where it belonged to the firm or they had an interest in it.

Q. Was the firm of Kilbourn and Latta called upon or did they do anything in relation to this purchase without submitting it for the approval of complainants or Stewart?

A. They never made a purchase without the direction of
267 the complainants and Stewart or one of them.

Q. In whose name was the title to all this property taken, and how came it to be so taken?

A. All of it, with the exception of square- 66, 93, and 113, part of square 95—all that they owned of it—and part of square 68 were taken in the name of James M. Latta, trustee. Part of sqr. 95 and part of sqr. 68 were taken in the name of James M. Latta, in fee, the party selling being Mr. Riggs, who declined to take the deed of trust for the deferred payments from a trustee. Square- 66, 93, & 113 were taken originally in the name of Curtis J. Hillyer. Originally Hillyer and Stewart composed the firm that purchased squares 66, 93, & 113. Late in the winter of 1871 & '2 Sunderland sold a mine to Sharon, of California, for nine hundred thousand dollars in gold. Hillyer and Stewart induced Sunderland, then, to go in with them in the purchases that they made and to make some additional purchases. Sunderland then made a point that the property should be taken in some third party's name as trustee for the three, and after the firm of Sunderland, Hillyer and Stewart
268 had agreed upon that they came to me, the three, and asked me if I would take the titles. I told them that if they proposed to pay cash for all the property I did not object, but that if I was to give my obligations for the deferred payments I did object. Sunderland then said that when they got through purchasing what they intended to purchase that he would take up my notes given for deferred payments and hold them as his individual investment, thereby releasing me from my obligations in the purchase of the property. Upon his assurance that he would do that I consented to take the titles; and then, after the titles, as I have before stated, were all taken thus, subsequently Hillyer conveyed squares 93 & 66 to me as trustee, 113 being sold to Stewart for a private residence lot. Some time late in the year 1872 Sunderland bought out Stewart's interest in the property, except 113, which Stewart owned individually.

Q. What opportunity, if any, had the complainants of knowing the contents of these deeds?

269 A. They examined them all before execution, and, in conformity with an agreement entered into between the Real Estate Association and Kilbourn and Latta and these complainants and other parties, who would purchase through the firm large amounts of property, the deeds were not placed on record for from three to six months, with the view of withholding from the community at large the fact that large purchases were being made of real estate in the northwestern section of the city, fearing that the disclosing of that fact would so rapidly appreciate the price of property as to defeat the purchases that they contemplated making; therefore the deeds were withheld from the records until about the second day of October, 1872, when they were all placed on record, aggregating perhaps from eight hundred thousand (800,000) to one million of dollars worth of property, and a list published of the transfers in the papers, both morning and evening, of the next day. That list, as it appeared in the papers, was read over in our office that day—the day

of publication—by the complainants and others interested in
270 property and commented upon, in which they all congratulated themselves on the fact that it had been done and that they had accomplished all of the purchases that they contemplated making, no purchases being made after that of any consequence. The effect upon property immediately upon the publication of this list was exactly as it was contemplated it would be—a rapid appreciation in the price of property of all then holding it. The deeds, as fast as they were taken, were put into the safe, into the box of deeds of the complainants, marked in large letters plainly, "Sunderland and Hillyer." All the other papers connected with the transaction and deeds and papers with the property of the Real Estate Association were put into similar boxes and similarly marked, with the deeds and papers of other large purchasers. To these deeds and papers of the complainants they had free and unobstructed access at all times up to the date of their being recorded, as also they had to their account on the books of Kilbourn & Latta.

271 Q. At what time did the complainants leave Washington for Europe?

A. I think that Hillyer left in March or April of 1873; Sunderland on the third day of May, 1873.

Q. Had it been mentioned between either you or them that you also were to go?

A. It had been mentioned that the complainants and myself should go to Europe, and I did go in company with Sunderland, the complainant, on the third day of May, he having wished me to go with him, Sunderland even offering to pay my passage to Europe.

Q. At what time did you and they return?

A. I returned in September, Hillyer in October, and Sunderland in November of 1873.

Q. What was the express purpose of complainants in making these purchases, and were or were not sales of property contemplated, and, if so, at what time?

A. They made these purchases as an investment, with the ultimate view, when the city grew up, of selling the property for a profit; but up to the time that they went to Europe they left without affixing any price to the property and without an effort
272 to sell anything. In fact, I think they declined to entertain any offer for any of the property at that time.

Q. When was the firm of Kilbourn & Latta authorized or instructed to make sales of this property?

—. They never proposed or instructed us to sell any of this property until after the return of Hillyer from Europe. The failure of Jay Cooke & Co., in Sep., 1873, having brought a panic on the country, by which Hillyer had lost heavily—I think Sunderland, too—and brought about a great depression in commercial circles, especially of real estate, Hillyer then came to Washington and said that he would not be in a position to meet his share of the obligations on this real estate and then proposed that we sell, if we could, any or — in which he was interested. We advised him that the

sale of the property (it being outlying lots and in broken and unsaleable shape, large quantities of it being from 5 to 20 ft. above grade, and other portions of it being from one to 10 feet below grade) could not be made without a sacrifice, as it could not be sold in that shape, and that was the first that I ever heard about the sale of the property or any portion of it.

273 Q. At that interview was anything said by Hillyer about the care and management of this property or about compensation therefore?

A. During that interview Hillyer wanted to know what we proposed to charge for the care and management of this property and looking after those deferred payments, taxes, &c. His conversation was chiefly with me, although Kilbourn and Olmstead were standing by. I having attended to most of the business we had in purchasing all that property, I told him that the firm had talked it over and we had decided that so long as the property remained in our care and under our management for looking after the disbursements, paying taxes, &c., we thought a fair compensation would be one per cent. — annum of the purchase price of the property. He thought that charge was more than we ought to make and suggested that he thought that ¾ of 1% per annum would be a good charge. I was firm in my determination, and so expressed it to him, that I would not consent, as a member of the firm, to accept less than the compensation I had named, which was 1% of the purchase

274 price of the property per annum. He left the office without consenting in so many words to the proposed charge and without making any other arrangement. That was the last and only conversation or consultation on the subject until about the time of the dissolution of the firm of Kilbourn and Latta, in the last of 1876, when, knowing the depressed condition of real estate and realizing the fact that these men did not make a success of it, the firm determined then that they would be content with a charge of five thousand (5,000) dollars a year, which they made and entered on the books of Kilbourn and Latta, and which charge was below what the actual services for the care and management of the property were really worth.

Q. What was the difference between ¾% and the charge of $5,000?

A. About two hundred dollars, ¾ of 1% being forty-eight hundred dol's.

State in detail the nature of the services it was necessary for you to render in the care and management of this property.

The legitimate services were in the responsibility of receiving large sums of money, taking care of it, and disbursing it on

275 the deferred payments; taking up notes; having accepted the deeds of release, placing them on record; seeing that all the papers were in proper form; paying of the general taxes and looking after the special assessments on the property; refusing them, adjusting them, and paying them; guarding the property from having debris dumped upon it; guarding it from having the sod removed from the surface and from having it dug in holes for gravel. It is well here to state during that period the so-called improvements

of Washington were going on, and streets aggregating, I think, more than 5 miles ran through their property, on which they were repeatedly taking up the sidewalks, then widening the streets, removing the gutters and the curbs, and then again running sewers in various directions; and, as a result of this, there being hundreds of contractors in the city that were stealing the material of the gutters and curbs and the sidewalks; and, as an illustration, in one night a contractor took up the gutters and curbs and sidewalks of one whole square, about 600 feet, and carted them down to the material yard and turned it in and got credit for it,
276 and Mr. Olmstead learning immediately who had done it went and got a memoranda of it and filed it in the office and recovered from the District nine hundred dollars for the material. This was but one of more than twenty cases of the kind. They were filling streets to the grade, creating nuisances for which more than fifty notices were served on the firm and on me, personally threatening arrest and fines for the nuisances or stagnant water unless it was abated. This involved the necessity of going to the District government to get sewers laid through the streets between the various properties, to tap the lakes of water and drain them off, of employing graders to grade down the property belonging to these complainants, where it was sometimes 17 ft. above the grade, carting it off into the low places and filling them up. More than eight hundred thousand (800,000) ft. of dirt was put in one square above. We plowed and leveled down the ground and shook grass on it in order to bring it in shape for market. These were the legitimate services. The illegitimate services were of a still larger and
277 greater character and more difficult. A tax was levied of 5% in one year upon this property and upon all property in Washington for the purpose of improvement, and the assessment of property in the northwestern portion of the city was increased more than 100%, which involved the necessity of going to Congress, which this firm did, and get an act passed for the relief of the property — in Washington, ultimating in the appropriation of more than five millions of dollars to be applied to these improvements, otherwise the property would have been sunk hopelessly in taxes for which it might have been necessary to sacrifice it. We got the assessment of this property of Sunderland and Hillyer reduced, I think, more than eighty thousand (80,000) dollars. The taxes upon that reduction alone would have been about four thousand (4,000) dollars a year. We got drawback certificates for special improvements where the improvements had been torn up. This amount of work involved the daily labor of one man about the property for more than two (2) years, and many other illegitimate services that the firm were called upon to perform, which
278 we did not contemplate at the time that we proposed to make this charge of 1% per annum, and the extension of notes to the amount of more than two hundred thousand dollars (200,000) that were falling due and going to protest almost daily, and making large loans on this property, and in some instance- giving our individual notes to save the property from utter destruction and going

to the judges of the supreme court of the Dist. of Columbia and urging them to grant injunctions against the sale of various pieces of property throughout the city of Washington, well knowing that if any considerable portion of property was sold, especially in the northwestern portion of the city, that it would break the market completely and everybody would close out under deeds of trust and this property would be sold at a great sacrifice; and it was owing to the efforts of the firm of Kilbourn and Latta that this and other property was not completely sacrificed, and but for our untiring energy, our diplomacy, and sleepless vigilance in managing it would have been entirely lost before the close of 1876.

279 Q. What clerical labor was required to keep this business in shape?

A. The book-keeping alone and the clerical work alone of keeping these accounts in shape, for we had to itemize every tax bill. We had to calculate the assessment of every piece of property to see that the tax bills were correct, and to keep an account of all these bills was worth eighteen hundred dollars a year; then we had to preserve scrupulo-sly a voucher for every cent paid out; every mistake that was made as against ourselves was a dead loss. Sunderland and Hillyer told me that they would allow no payment where the voucher was not produced.

Q. If you can, state the average and general taxes as well as special taxes against this property.

A. It varied in different years very much, but I should think the general taxes at one time were not less than thirty thousand dollars, and at the lowest period not less than eight thousand dollars. The special taxes ran, perhaps, from nine to thirty thousand dollars a year. I know that Sunderland told me the fact that in 1879, after we had ceased to have the care and management of the prop-

280 erty and they had an attorney, Mr. John Bull, to care and manage the property, who was a very competent man, that he paid Mr. Olmstead, who was formerly nominally a member of our firm, three thousand dollars for the straightening up of the taxes of this property that his attorney could not manage for one year.

Q. Did the firm of Kilbourn and Latta have any assistance in the management of this property, and was the whole left to their management?

A. They had the entire management and care of the property, as well as the receiving and disbursement of the money.

Q. From 1873 to '76 — Sunderland and Hillyer in Washington?

A. Sunderland was never in Washington during that period; I think Hillyer was. During that period we never received a letter from Sunderland but one, rarely from Hillyer, and for long periods none at all, and then we have written every ten days and telegraphed every 10 to 15 days for money, telling them the necessity of it. We would for months receive no response. The notes going to protest and bank managers knowing nobody but

281 the firm of Kilbourn and Latta and me as trustee in hese transactions, the whole odium of our failure to pay fell upon

the firm and upon me, and could have only one effect—that was to very seriously impair our credit and financial standing. To say to the creditors that we were not the owners was too late. They knew nobody but us, and the position was humiliating and embarrassing every hour for more than four years, and I was constantly threatened with suits on the notes that I had given, both my own and those as trustee.

Q. Did Sunderland and Hillyer, between the time these purchases were made and the first of January, 1877, take up or arrange for taking up any of the outstanding paper on which you had put your name?

A. Sunderland utterly refused to take up any of these notes and hold them as an investment, as he had agreed to do. They furnished perhaps one-half the money necessary to meet interest and pay the general taxes. They furnished no money to pay special taxes, and I think none of any consequence at all to take up the obligations I had given. The money was procured from loans generally.

282 Q. About what was the amount of these outstanding obligations on which was your name between the time of the purchase and the first of January, 1877?

A. My notes were out at the close of the purchases for, I think, something like three hundred and twenty-five or four hundred thousand dollars. They were reduced to, I should say, something like one hundred and fifty thousand dollars or two hundred thousand dollars by the first of January, 1877.

Q. How were these reductions made?

A. They were made sometimes by the substitution of Sunderland's notes for my own where the property belonged to him individually, and sometimes by sums of money from the complainants, and perhaps in two instances by sales of the property. I think there never had been more than two sales from the date of the purchase up to the first of January, 1877.

Q. What legal advice did you have as to your personal liability on these obligations?

A. I was advised by counsel, in whom I had confidence, that I was personally liable on every note that I had given whether as trustee or in my individual capacity; that where the note

283 did not state in the body of the note that I was trustee for whom that I was personally liable.

Q. Have you any of these notes filed as exhibits to this deposition?

A. I have none here.

Q. About how much money was remitted to you during these years by complainants—from '73 to '77?

A. I have no date by which I can tell now.

Q. About what time did remittance cease coming from them, if at all?

A. There were no remittances of any consequence after '74, and no remittances during the year 1876 of any consequence.

Q. What, if any, sales of property were made by Kilbourn and Latta for the complain-ts, and when?

A. They made a sale, I think, in the spring of 1873, in April, to the British Government for an embassay. That sale was part of square 138; it was about nine months after its purchase. The profit, I think, was three cents a foot. It had been bought for 47 cents, and the best part of it sold to the British Government for 50 cts. Another sale was made, I think, in 1878, for a school-house, on square 156, the proceeds of which were to apply on the
284 $32,000 note given for part payment of 115, it having been sold to the same institution.

Q. Did the firm of Kilbourn and Latta rec. any commission for these sales?

A. The firm of Kilbourn and Latta never received a cent of commission from Sunderland and Hillyer for any services rendered as well as loans made except for care and management charged in 1876.

Q. When was the firm of Kilbourn & Latta dissolved?

A. On the 31st December, 1876.

Q. At that time what changes took place in the firm?

A. At that time I retired from the firm and Kilbourn and Olmstead began business, assuming all the liabilities and appropriating the assets and the firm's property, I retaining the care and management of the property of Sunderland and Hillyer and of Thos. Sunderland.

Q. When and how were the charges entered by the firm of Kilbourn and Latta or the firm of Kilbourn and Olmstead for the caring of this property?

A. In December, after we had agreed upon the dissolution
285 and agreed upon this charge to Sund. & Hillyer, the charge was entered up by Mr. Olmstead on the books of Kilbourn & Latta for the care and management of this property, in accordance with our agreement, one-half of it being credited to Olmstead and one-half to Kilbourn, I receiving no benefit from the charge whatever. That charge the complainants saw and examined all the books of Kilbourn and Olmstead on or before the 15th day of June, 1878, and they saw that I received no part of this charge.

Q. When and how were the pl't'fs notified of the dissolution of the firm of Kilbourn & Latta?

A. They were notified by letter from me on the 7th day of January, which they received on the 14th, and were notified that I had retained the care and management of their property.

Q. Who received the benefit of the charge, if any was made, for the care of the property after the dissolution of the firm of Kilbourn & Latta?

A. I did. I charged them in my account at the same rate that the firm had charged them, but, the property by that time having, some of it, been disposed of, the sum in the aggregate would
286 not amount to $5,000 per annum.

Q. When and under what circumstances was the charge of care and management brought about of Sunderland and Hillyer?

A. In Dec., I think it was '77, but possibly the 1st January, '78, I wrote Sunderland and Hillyer; but before that date I wrote them that I was going to leave the city and could not longer take charge

of their property. I think perhaps I may have told Hillyer when he was in Washington that I was to do so, and that they must get somebody else to take charge and release me from all obligations and the titles. In Jan'y I wrote them in response to some letters of theirs suggesting an attorney, and telling them that they had better come on and take the title themselves, and suggesting that they come by the first of May at the farthest, and substitute their notes for mine and release me. In response to this letter, a copy — herewith filed and marked Exhibit "A" and made part of this deposition, they came on about the 12th day of June, 1878, and on the 15th day of the same month they were at my house, and I rendered to them my account of all the money received from them from Jan. 1st, 1877,
287 to June 15th, 1878, and of my disbursements up to that date, in which statement of amounts appeared a charge of the 31st of Dec., '77, for my services in the care and management of the property up to that date, and on the 15th day of June the charge for the care and management of the property to that date, and at that time exhibited to them all my vouchers for the various disbursements, and at the same time delivered to them all of the deeds and release deeds that had been obtained and canceled notes and other papers pertaining to their property, including all abstracts of titles. They were there several hours and examined the whole of them as far as they chose, and I thought they looked at nearly every paper and then returned them to me. They at that time told me that they had seen this charge for care and management on the books of Kilbourn and Latta, complained of the amount of the charge, and talked as though we were not entitled to anything. Sunderland quite pointedly admitted that he thought the charge was not exorbitant, and that he himself made no objection to it. I reminded Hillyer
288 at that time that this did not embrace any charge as trustee which I was entitled to.

Q. How was this statement of account that you then rendered them made out?

A. It was made out by myself. They thought it was not in a very highly clerical condition, and as they wanted the acc't filed they wanted I should get Mr. Bull, who was a very competent accountant and wrote a very nice hand, to put it in good shape for them. My acc't was made out by myself and rendered to them on that day—the 15th of June, 1878—and was simply for care and management, but not for my services as trustee.

Q. Did they at this interview examine all your vouchers?

A. I think they did. I think they examined every paper and voucher and all the deeds of release, &c.

Q. Was any conversation or discussion had as to any charge besides the question of compensation to you and to the firm of Kilbourn and Latta?

A. None whatever.

Q. Did you or the firm of Kilbourn & Latta ever contemplate receiving your compensation for your trouble in regard to
289 this property in the shape of commissions from prospective sales?

A. Never. We were satisfied from the time that they put the price on the property and authorized us to sell it, which was late in '73, that no sales could be made for years to come, as there was not.

Q. Did you or the firm of Kilbourn & Latta receive any brokerage commissions from Sunderland & Hillyer for any of these purchases made by them?

A. We never did. We were not employed by them to make the purchases. We were in no way brokers or agents, but we received a compensation from the men who had employed us and whose agents we were—the vendors.

Q. What would your commissions have am't'd to if you had charged such on your purchases and loans?

A. It would have exceeded to a very considerable amount the sum that was charged them for care and management.

Q. Was the charge made by the firm of Kilbourn & Latta and that made by you after the dissolution of that firm for the care and management of the property a fair and just one?

290 —. It was certainly not too large.

Q. Did this charge include compensation for your services as trustee?

A. It did not.

Q. When, if ever, did Sunderland and Hillyer demand of you a conveyance of the property held by you as trustee and that held in your name absolutely?

A. On June 15th, 1880, they sent me deeds to execute of what they owned in square 195 and what they owed in square 134 and sqr. 93 and sqr. 66 and property in 158. They sent me these deeds for execution. They being general warranty deeds and made to the complainants was one reason why I declined to execute them. Another reason was that these were among the most valuable of the property they owned. I wanted they should take up all my obligations and let me deed them all the property and they give me a clear acquittance from every obligation to them, to which I replied on the 20th, assigning my reasons for not signing the deeds of trust, a copy of which letter is appended to the evidence of John Bull in this case, marked Exhibit "J." These deeds I have in my

291 hand and desire to fill them as Exhibits "1," "2," & "3."

Q. What was the amount of the outstanding obligations upo- which you might be liable at that time?

A. I do not know what amount they may have paid between the 15th June, '78, and the 15 June, '80, but I have reason to believe that the outstanding obligations of mine were over one hundred thousand (100,000) dollars at that time.

Q. Had no evidence of any reduction below that amount been furnished you at that time.

A. It had not. I had asked for this information from their attorney, Mr. Bull, on 2 or 3 different occasions, and asked him to furnish me with a list of the property that I had conveyed at their request, which he did not furnish me. That was another reason why I de-

clined to execute those deeds and any other deeds. I could not tell what I had conveyed, as I did not keep any memorandum of it.

Q. What amount of your notes given for their benefit were outstanding on June 15th, '78?

A. About two hundred thousand dollars.

292 Q. What amount of the notes then outstanding have been delivered up to you cancelled and marked paid since?

A. None.

Q. And so far as you have any present knowledge your obligations are still outstanding for that amount?

A. I do not know of my personal knowledge but what they are.

Q. If you had executed the deeds which the complainants sent you for execution on the 15th June, '80, what effect would it have had upon your liabilities?

A. I think the *pro rata* security would have been lessened, as this was all of the most valuable and saleable property they had.

Q. What was your understanding as to the nature of the relation sustained by the complainants with each other in these transactions?

A. I supposed that they were partners in every sense and individually liable each for the whole of my obligations.

Q. Was or was not this relation of complainants to each other one of the reasons assigned to you why they desired to have the property taken in your name?

A. It was, and in speaking of their responsibility they
293 spoke of their combined responsibility, and strongly urged Sunderland to go in with them with his large amount of money.

Q. Was there any separate ownership in regard to any part of this property speaking of during your connection with it?

A. There was none except where Sunderland purchased property on his own account.

Q. Is any of the property purchased by Sunderland on his individual account involved in any of these suits of Sunderland & Hillyer against you and against Kilbourn and Latta?

A. There is none of it—no individual property involved in this case.

Q. Then your obligations as trustee of this property was an entirety, was it not?

A. It was. I do not regard that they had a right to demand of me a deed of this property, upon which there was no encumbrance or a small encumbrance and the most valuable and saleable of the property, and leave for my protection only the least valuable and the most heavily encumbered.

Q. Upon what terms and when have you offered to convey all this property?

294 A. The terms are set forth in my letter to them of June 20th, referred to as Exhibit "J," filed with Mr. Bull's testimony of June 16, '80.

Q. Have you ever made any charge for your services as trustee in this matter?

A. I have never presented a charge to them nor have I ever been paid anything on account of my services as trustee.

Q. What would be a fair compensation for your services as such trustee for giving your notes for so large amounts and for assuming payments for additional amounts and the anxiety of litigation connected with holding this title for so long a period?

A. I think twenty-five thousand dol's would be a small compensation.

Q. At what date did you cease to reside in Washington city?

A. Practically in May, '78. I left the city about the 22d or 23d of June. I think it was '78.

Q. In the testimony of Sunderland in this case he states that he arrived in Washington about the middle of June and was there for 3 months and had a great many conversations with you. When did he arrive in '78?

A. He arrived in Washington city on the 12th day of June, 1878. I think the only conversation of five minutes' duration that
295 he had with me after that date was on the 15th day of June, at my house, at the time that I exhibited my account, and that he examined those deeds, vouchers, &c.

Q. Do you remember positively that it was on the 15th of June that you rendered your account and exhibited vouchers?

A. I do.

Q. When did you first tell Sunderland or Hillyer that you should charge for services as trustee?

A. I never told them that I should charge, in so many words, for services as trustee, but on the 15th day of June, when they were at my house, I told them then that this charge for care and management did not embrace my charge as trustee. I did not say to them that I should make such and such charges as trustee, for I hoped that common decency would on their part dictate that they should voluntarily offer to pay me a liberal compensation for acting as trustee for them for more than six (6) years for property valued at more than half a million dollars, and I waited for them to make me a proposition of that kind. I intended, however, some time
296 when I got through with their business, to make my claim for services as trustee.

Q. Did the firm of Kilbourn & Latta ever advance money to complainants; and, if so, how?

A. They advanced money at various times. I do not remember how much, but I think as much as 8, 10, or 12 thousand dollars at a time.

Q. Was that for the individuals or for the benefit of the property?

A. It was for the benefit of the property, to make payments when they had no money there.

Q. Did you ever endorse for either of the complainants on loans?

A. I did endorse for Hillyer and loaned Sunderland money, and the firm in addition to that had given their notes, and I gave my own notes to raise money to pay the obligations of Sunderland & Hillyer to the amount of as much, I think, as seventeen to twenty thousand dollars at a time.

Q. What did Sunderland state at the interview in June, '78, in regard to your charges and of Kilbourn & Latta for the management of this property?

A. He stated that he thought the charge was a fair one.

Q. Did you ever at any time ask for power of attorney from Sunderland & Hillyer, and for what purpose?

297 A. I asked for power of attorney from them to collect monies that were due from Kilbourn & Olmstead to them, that it might be applied upon the payment of their overdue obligations.

Q. Sunderland states in his testimony that you did not render your account to them until July or August, '78. What are the facts in regard to this, and were you in Washington during these two months?

A. The fact is I rendered my account on the 15th of June, '78, and I left Washington about the 22d or 23d June, '78, and I did not return there until about the 25th of August, '78. I was not in Washington during July at all, nor in August, until about the 25th.

Q. Sunderland & Hillyer speak in their testimony of having taken their business out of your hands in June, '78. What is the fact about this?

A. On the first of January or soon after that, '77, whenever I saw Hillyer or in writing to him — Sunderland both, I urged them to release me from those titles and those obligations. I asked them to put the property in somebody else's hands or take it themselves, and in Dec., '77, or January, '78, the 12th of Jan., I think it was, I wrote them designating a time at which I wanted them to

298 come on, about May the first, and take their property, as I wanted to leave the city. Ever since the dissolution of the firm of Kilbourn & Latta, so far from their taking it out of my hands, I could not induce them to take it from me. I refused to retain the care and management of it any longer and suggested to them that they put it into the hands of Mr. Bull, if that gentleman would consent to take it. Then they did put the management and care of it, as I suggested, in Mr. Bull's hands, Sunderland in the meantime having become bankrupt.

Q. For how much would the property have sold at a forced sale in the latter part of '73, '4, '5, '6, or '7?

A. It would not have sold at a forced sale for the taxes that had accrued on it or the amount of the encumbrances then against it.

Q. What would have been the result *been* for your efforts in caring for it—renewing loans and attention to taxes, getting extensions, &c.?

A. The property would have undoubtedly been entirely sacrificed.

Q. Did you ever have any litigations about taxes or special assessments about this property?

299 A. I instituted legal proceedings and set aside a special assessment that involved a very large amount, and I have in my hands a letter from the attorney whom I employed at that time to attend to the business in relation to it, which I file now, with his bill for legal services, amounting to $133.65, marked "Exhibit 4," and made part of this deposition.

Q. Sunderland in his testimony speaks of the sale of bonds; who received the commissions on this sale?

A. That needs a little explanation. Loans were very difficult to make in '76, and we only succeeded in making a loan from John Jeffries on one square of ground (156) by taking the amount in bonds, which were below par. These bonds were placed in the hands of a broker for sale, the commissions and discount on these bonds amounting to, I believe, about $1,100.00 as a result of that sale. None of the commissions were received by the firm of Kilbourn & Latta or by me.

Q. In the deeds sent you for execution June 15, '80, and marked "Exhibits 1, 2, & 5," where is Mr. Hillyer's residence placed?

A. In Washington city.

Q. How long proceeding the institution of these suits was that?

A. About ten days.

300 Q. Who drew these deeds? And state how you know that.

A. John Bull. I am familiar with his handwriting on the deeds, and they were enclosed in a letter from him.

Q. What relation did John Bull sustain to Mr. Hillyer?

A. He was his attorney.

Q. State whether or not you procured a loan for Wm. M. Stewart at the instance of Mr. Sunderland, and what understanding you had in regard to commissions for the same, and what charges you have made for it.

A. Stewart, in order to build a private residence on square 113 that he had taken from Sunderland and Hillyer (it was in the midst of their property)—he owned a residence on Massachusetts Ave. near 14th St. He said he could not build without he sold the residence he then owned, for which he asked thirty-two thousand dol's, and obtained a loan on square 113 of thirty-five thousand dollars. Sunderland agreed to loan him the $35,000 to get him to build, because he thought it would largely increase the value of their property. Stewart putting his house in our hands for sale, we found a purchaser for it in Gen'l Schenk at $32,000, and there was no com-

301 mission to us in the sale. Sunderland wanted to get out, for reasons of his own, of loaning Stewart this $35,000. He said to us if we procured the loan from somebody else that he would pay a com's'n of one thousand dollars on the loan and on the sale of this house. We procured the loan of Geo. Taylor and made a sale of the house, charging him up with the one thousand dollars which he had agreed to pay and told us to charge to him.

Have you ever been notified by Sunderland and Hillyer of any division of this property between them?

I never have. Mr. Bull once at his office, I think, showed me some papers in relation to it, and I never had the paper or a copy of it, to my recollection.

Was this act of Mr. Bull in calling your attention to it merely a casual one or as agent of Sunderland and Hillyer?

Well, I think he intended to call my attention to it with a view of authorizing me to sign any deeds that he might send me in conformity with that agreement.

What was the character of the paper Mr. Bull showed you?

Well, I think it was simply an agreement for the division without being acknowledged. It was in fact simply an agreement,
302 signed by both, saying what they proposed should be the division of the property.

You have never received any other notice of the proposed division of the property?

I never have yet. I have seen some deeds that were where there were encumbrances on the property. They were sent to me by Mr. Bull with the understanding that the party to whom I conveyed was to substitute his own notes for those of mine; but I have never received any of the notes so agreed to be taken up.

—. What response did you or your firm ever receive from Sunderland in answer to letters for money to meet obligations?

A. He never answered a letter. We never had a letter from Sunland which was written from New York from the time he began his business there until the dissolution, and I never received one *one* from him while I had the care and management of the property afterwards.

How many loans and for what amounts did you negotiate during your connection with the property?

It is hard for me to recollect all of them during so many years. I can only recollect one of twenty thousand dollars
303 and one of fifty thousand, one of thirty-five and a number of small loans from 15 thousand up perhaps to thirty-five thousand dollars.

What was your practice in regard to consulting with Sunderland and Hillyer upon making loans for them?

I never made a loan for them without consulting them about it and getting their assent, although under the deed by which I held the property I was employed to sell mortgages or convey the property without consulting them. I herewith file copies of letters written to them on this subject and marked "Exhibits b," "c," "d," "e," "f," "g," "h," "i," "j," "k," "l," "m," and "n" & "o."

Do you consider yourself liable on these notes that have not been ret'd to you marked cancelled?

I think I am, and I believe that those holding the notes concur in my view of it, or they would not be holding the notes over my head.

Do you stand ready and willing, upon the transfer to you of all outstanding obligations and acquittances therefor and the payment of all dues to you for services as trustee by Sunderland & Hillyer, to convey to them all of the property now standing in your name as trustee belonging?

I am, and will deliver it to them.

J. M. LATTA.

304 Subscribed to and sworn to before me on the — day at the place aforesaid.

CHAS. ETHRIDGE,
Notary Public, Bernalillo Co., Te. New Mexico.

EXHIBIT "A."

WASH., D. C., *Jan.* 12, 1878.

C. J. Hillyer.

D'R SIR: Yours of the 29th Dec. is at hand. I rec'd from S. on the 4th inst., $8,500. I had previously to receiving it paid the in'st to Mr. Riggs, $350; to Muller, 410. I paid Muller on the 4th $3,500 on the principal.

His note, $6,000, I paid in'st in 155. overdue since the 24th Nov., 1875; the in'st on 153, overdue since 14th Dec., $600, & the in'st on 67, $274.50. I wrote S. on the 3d inst. that the $9,000 on 67 would be due on the 6th inst. and how the error arose from the alienations in designating the months of July for Jan'y, '78. He wants his money at once. An increase of interest is no inducement to him, as he owes the money. K. & O. admit they have not paid anything on the $2,715 they owe you, but offer no explanation. It will be necessary for you to remit the $2,000 to pay taxes. There is
305 4 per cent. penalty added now. There will be due the quarterly in'st to Henning, sq. 92, 23d inst., $140.86. Mr. Riggs wants the 10th due him, or he will extend it for 5 years, retaining the whole sq. as security. I should regard it great folly to tie up so much property for such a time for so small an amount. After the taxes are paid there will be no further payments to make other than the above-mentioned until April 10, when the in'st on 156 will be due, $2,000, unless some of the overdue obligations should be called for; then the payments will be as follows:

April	23.	In'st on 92	$140 86	140 86
May	24.	$24,000, in'st $720	24,720	
	24.	In'st on sq. 155	1,575	
June	4.	Thompson, 35,000, 1575	36,575	
	14.	In'st on sq. 66	240	
	14.	Bal. on 153, 15,000, 600 in'st	15,600	
	30.	Last half tax, say	3,500	

There is laying overdue now $92,043.86. On the 5th of June, if none are paid on the principal prior, there will be overdue $151,043.86, as will be seen by the endorsed statement of the liabilities of the property. The Thompson loan, I think, can be extended. The Muller note can run for a year or so. The $45,000 on 155 is very indefi-
306 nite. They declined to make any definite agreement about it. It may run for years or may be called for any day. I think your selection of an attorney-in-fact to attend to the business management of the property when transferred is a good one, and I had quite a lengthy interview with the Middletons on the subject. Neither they nor I quite understood what the duties on the position would be.

The titles being conveyed to you, the notes and deeds of trust must be executed by you; otherwise the p. of a. would have to be given for each specific act. No general p. of a. would be sufficient in this district.

I must insist upon being absolutely relieved from every form of obligations simultaneously with my parting with the titles; and by this statement you will see by the 5th of June there will be but one obligation unmatured, and in that case Jeffries controls it, and no trouble about substitution. The note of Muller's is your own. I would suggest you come on, say May, and arrange to pay off or substitute your own notes for those of mine and take the title.
307 Please execute the release as to indebtedness of K. & O.

Statement Refer-ed to in For-going Letter.

66,	past-due,	8	per cent.,	St. H.	6,000	
93, 134, 158,	Thompson,	Jan. 4, '78			35,000	
115,	May 24				24,000	
155,	past-due,	7	per cent.		45,000	
156,	Oct. 10, '81,	8	per cent.		50,000	
195,	past-due,	7	"		10,000	
67,	"			J. S.	9,000	
92,	"	8	"	J. S.	7,043	86
153,	"	8		J. S.	15,000	
					$201,043	86

EXHIBIT " B."

GOSHEN, IND., *July* 4, 1877.

C. J. Hillyer, Esq., Virginia City, Nev.

DEAR SIR: I know you had reason to expect to hear from me before this, but, in the first place, I found great difficulty in getting the money absolutely necessary to tide over your real estate. I made three distinct negotiations for it, two of which failed when I came to close them up. I finally borrowed of J. W. Thompson, pres't bank, net $35,000, at 9 per cent., for one year, which I
308 can keep as long as I like or pay off as I like, he agreeing to release as any sales are made and take his money, and, by giving him large security, he did not demand payment of the special taxes, which amounted to nearly $5,000. I secured him on "93, part 134 & part 158."

I have $10,000 of Mr. Riggs, and 195 at 7 per cent., which he will take at any time I want to pay it.

I paid 155 down to $45,000; I paid balance 93; paid gen. tax & water tax due this year; paid Willard & paid for Sunderland on 153 $7,500, & got the bal. extended for 1 year; I could not get 158 graded for less than 20c.; made a contract at that figure; it will all be done by the 1st of Sept. and dirt deposited on 156; August Miller, I think, can run that loan at bank until fall; I am in hopes in the meantime to make sales sufficient to meet that & accumulating interest; I think I have your matters in fair shape.

My family are well.

Very truly yours, J. M. L.

309 EXHIBIT "C."

AUG. 3, '77.

Hon. L. G. Hince, Washington, D. C.

DEAR SIR: Yours of the 24th ult. is at hand. As Mr. Muller rec'd his net on the 26th ult., I presume he does not now desire the property sold.

Truly yours, J. M. LATTA.

EXHIBIT "D."

GOSHEN, IND., *August* 7, '77.

C. J. Hillyer, Esq.:

I want to first apologize for not paying for my reply to your tel. of the 21st ult., rec'd by me on the 23d. I sent one to R. at same time and operator neglected taking out pay for yours & only noticed it after I had left. K. did not reply to him, but wrote, & the strike detained mails; reason of delay in my last dispatch. Willard & I am not friends, & O. wanted to fix that matter. W. was in Boston at the time, & I left the money with K. & O. to pay for it. K. says there was a misapprehension or it would have been paid;
310 probably negotiating a loan with him or something of — kind.

Evans & Bro., who went to do the grading, estimated the am't at 12,000 yds. I left $2,400 with K. & O. to pay it. It is finished & amounts to—

19,839.$\frac{2}{7}\frac{0}{}$ yds., at 20c.	$3,967 94
Measures commissions	59 51
Total	$4,027 45
K. & O. have paid in sundries, $100.	
And to E. & Bro.	2,300
Leaving due them	$1,727 47

which they want.

Muller has had that note of $4,200 renewed for 30 days, due August 19th, & says it must be paid at maturity. He has sent me an order to sell the sq. under deed of trust. I have paid his semi-annual in'st. I left with K. & O. to pay W. I. the am't of bills rendered, $1,472.30. When they were prepared for ad. they amounted to $1,978. They p'd the $1,472.30, & then bal. is unpaid & advertised. His grading has cost $1,600 more than the estimate, then W. I. ab't 600 more than I thought for, & Muller wants his money. I have no funds in my hands, & write to know if you can furnish some until I return to W. to purchase or loan, — those
311 having money to loan are away for the summer.

Mr. W. I. should be p'd to prevent sale & for the expense. Grans might get along with $\frac{1}{2}$ their money (& the bal. in

Oct.). M., I think, if paid $2,200 might run the $2,000 till Oct. If you could place to my b'r in N. Y. by the 16 or 17th inst., say, $3,700 I would try & manage to run the rest along. K. & O. say the grading and filling is a great improvement.

V. T. y's, J. M. L.

EXHIBIT "E."

GOSHEN, *Sep. 20th*, '77.

MY DEAR HILLYER: This morning I rec'd a note from Illinois enclosing the ad., and turning to the Star I find it. I have had 2 letters from K. since, but no mention is made of it. I enclose letter from him in reply to your tel. & my letter, which speaks for itself. Please return it, as it refers to other matters between us. O., signing the firm name, giving me statement of ac., mentions $5,450.69 to Willard. Could I construe it otherwise than that they had paid it? I then wrote you mine of the 4th of July,
312 giving statement of payments out of the 35 M. I am satisfied now they intended to decline me in order to accomplish another matter.

I have to-day written Dadge sending him retainer and asking him to stop the sale, if he can, on the ground that one of the trustees has the money in his possession belonging to the *cestui que trusts* with which to pay the indebtedness. I have long since lost faith in O., but did suppose K. honest, and hope I shan't have to loose faith in him too. I wrote you on the 30th Aug't, but no reply yet.

Truly yours, J. M. L.

EXHIBIT "F."

GOSHEN, IND., *24th Sept.* '77.

G. W. Riggs, Esq.

D'R SIR: Mr. K advises me of your willingness to extend that 10 M on sq. 195 for 3, 4, or 5 years at 7 per cent. I should like to get 25 M, if I could, on that sq., if not at least 20 M. Can't you let
313 me have 10 M more at 7 per cent., & I will then take the whole 3 years? If you have not that am't to spare at present I would execute the deed of trust for the am't of $10,000 & leave it with you, you letting me have $2,500 Oct. 8, $2,000 24th Nov., & $2,000 Dec. 4, & the bal. by Jan. 7th, & pay you in'st from the dates I rec'd the sums.

The only thing against it is your deed of trust & a small special tax, which I don't propose paying until the matter has been legally passed upon. If you determine to do this please have a deed of trust & note drawn & sent me & I will execute & return it to you.

There is in'st due the Bancroft estate in November, & another matter of $2,000 due Oct. 8th at your bank which I wanted to meet, & should like to make this arrangement with you to do it.

Truly yours, J. M. L.

EXHIBIT "G."

WASH'N, *Nov.* 11, 1887.

C. J. Hillyer, Esq., Virginia City, Nev.

DEAR SIR: I wrote you on the 30th Aug. & again on the
314 20th Sept. & tel. you on the 5th inst., & no reply. I don't understand it. In a partial settlement of our affairs Jeffries became the bondsman of K. & O. to me in $35,000. They have been either unwilling or unable to fulfil on their part the agreement, & a controversy has grown out of it, & he is their att'y. As they were fast drifting, I thought, into bankruptcy, diverting the assets of the firm, seeking to bring in an outside operation of mine as an excuse for not settling & paying me, I yesterday, in self-defence, filed a bill asking a receiver for the firm, on which an injunction was granted against their intermeddling with the assets of the firm. Jeffries may become liable on his bond & thereby increase any hostility he may feel. This was a painful thing to do, but as I don't think either of them responsible I felt I must protect myself. Their conduct, however, went far toward relieving me of any delicacy. K.'s paper has gone to protest recently at 2 banks, O. being on one for $5,400. I hope this action of mine will secure that which is owing to S. & H. I make this statement thus full to disa-
315 buse your mind of anything you may have heard, and not for the purpose — the information go beyond yourself, as I have no desire to injure either of them. When here in August I was offered the money wanted this fall, but, being in hopes of making sales & not wanting any until Oct., I declined it on the promise, as I understood, I could have it in Oct. When I applied for it it had been used. The loan on 156 was made of Jeffries, to whom I wrote at once, telling of my disappointment. He replied he must have the money & would tel. you for it. When I returned he said he had not, & I did. He has given K. & O. instructions to sell, they being the trustees. I have about exhausted every source here for money—plenty of it, but none to loan on unimproved property. I shall go to Phila. this week to see if I can raise any there. The following are the amounts wanted:

The interest on 156, Oct. 10, '77	$2,000
Do. 155, Nov. 24,	1,575
Do. 115, " 23,	720
The in'st to Thompson	1,575
The in'st to Riggs	350
316 Taxes, Nov. 30	3,500
Note of Muller's (in bank), Dec. 20	2,700
Interest	440
" 153	525
" 67	270
	$13,655

The note of Muller's might be run along for six months, but all else must be paid. Now, what, if anything, can you and I do to relieve things? I shall continue to use every effort to borrow, but one can't pay without money.

Truly yours, J. M. L.

EXHIBIT "H."

WASHINGTON, D. C., *Nov.* 19, '77.

Thos. Sunderland, San Francisco, Cal.

DEAR SIR: I have been expecting you for a month. I must have some money, & it is not to be borrowed on unimproved property; at least I fail to find it. There is owing $45,000 on 155 that can run for several years yet at 7 per cent. if the interest is promptly paid. It is due 24th inst., $1,575.00. There is due on 115 $24,000, May 23, '78, the in'st of which is due 23d inst., $720. The
317 gen'l taxes are due the 30th inst., $3,500, & draw 2 per cent. per month until paid. There remains a call loan on 195 of 10 M at 7 per cent., in'st due Dec. 5, $350. The in'st on the loan I made last June of 35 M at 9 per cent. for 1 yr. will be due Dec. 4, $1,575. There is due August Muller Dec. 20 $2,700, note in b'k, in'st same date, $440. There is due Muller $9,500; it is past due & drawing 8 per cent.; when this $2,700 is paid the bal. is to lay at 8 per cent. There is past due, but extended for 1 & 2 yrs. from June 14, '77, $1,500 on 153, in'st due Dec. 14, $525. There will be due July 6, '78, $9,000 on 67, in'st due July 6, $270. There is past due & held one at 8 per cent., $7,043, on 92, due quarterly, January 23, '78, $140.36, making a total wanted to about Jan. 1, '78, of $11,800, the principal partly the 30th inst. H. has sent this fall 15,700. I was in hopes I could sell sufficient to meet liabilities, & so said to H. last spring, but I have been unsuccessful so far; but I must have money to meet in'st promptly if the cr. of the firm is to be sustained.
318 When we fail to do this the extensions will stop and the property will be sold out under the trusts if not paid. If I could — 8 M by the 30th inst. & 4 M by the 15th Dec. it would do. Let me hear from you by tel. at once.

J. M. LATTA.

EXHIBIT "I."

WASH., D. C., *Nov.* 20, '77.

C. J. Hillyer, Va. City.

DEAR SIR: Yours of the 12 & 13 & your tel. of same date is at hand; 2 M you sent me was paid Jeffries within an hour after I received it. My letter to you of the 11th inst. you have by this date & will explain away some of your impressions, I hoped. Taking mine of the 30th Aug. & 20th Sept. together with this of the 11th inst. & you have a full history of why the Willard matter was not paid. I had a prospect of borrowing the money, & therefore did not write you, &, as I stated in mine of the 11th inst., sup-

posed Jeffries had tel'd you the 10th of Oct. for the am't. It sort of encourages a fellow to have his letters answered. I enclosed a letter of K.'s, which I asked you to return. You have not done so. Please do this, as I may want to use it. I wrote Sunderland yesterday, giving him a statement of how your matters stand.
319 He will get that on the 25. I asked him to tel. a response.

Sq. 151 was sold Oct. 1, 1877, to N. L. Jeffries, p'r S. & H., as in'st may appear, for $20,360.48; cash, $2,500; 2 notes of $8,930.24 each, $17,860.48, due in 1 & 2 yrs., 6 per cent. semi-annual. The note has been cancelled and is in my possession. Who will have charge of this? If I can borrow the money I will tel. you; otherwise you may know I rely on you & S. furnishing it. I will try and keep you fully advised.

Truly yours, J. M. L.

EXHIBIT "J."

DEC. 11, '77.

C. J. Hillyer.

DEAR SIR: Yours of the 1st inst. is at hand. Mrs. Alexander tells me she sent you a slip from the Star noticing the suits of K. & L. When you have read that is it necessary I should say J.'s statement to you that I had bro't the suit as trustee of S. & H. is simply a lie (as we say in French)? The suit is in my own name,
320 pure and simple, for my own protection. Incidentally it may benefit, among other cr's of K. & O., yourselves. In the sum of 40 M unsecured they owe is mentioned the sum due you & S.; beyond that your names are not mentioned. I presume the Star intended to say the pool property when it used your names. Your property is in no way effected by our controversy farther than the $2,700 they admit they owe you. Your interests — only so far as they embar-ass me in getting at information I may want. They swore in their answer if the court would remove the restraining order as to this money in bank they would apply this 2,700 in paying the taxes on your property. The court granted that, but they did not pay a dollar, & 2 per cent. was added for Dec. They say upon an order from you they will deliver the balance of the papers. This you had better send me. It is for you to say what shall be done about this indebtedness to you. I enclose a release, which I should like signed by yourself and S. I want to be relieved from any responsibility on my part so far as this in-
321 debtedness to you is concerned. The question as to who is your agent & authorized to receive & expend money should not remain in doubt. It would impair my usefulness in raising money or making negotiations of any kind. The $2,500 was rec'd on the 1st inst. Out of it I paid in'st on 115, $720; ins't to Thompson, $1,575; sundries, $35. I have no notice of in'st on 155 due the 24th ult. On the 14th inst. there is due the interest on 153, $600, instead of $575, as I wrote. The extension is at 8% instead of 7 per cent. On the same day the in'st is due Aug. Muller, $410, & on the 24th inst. his note in bank, $2,700, & he says *she* told you last spring he wanted to have but $6,000 on that sq., & there-

fore wants 800 by Xmas. I will pay him his interest on the 14th & try & get the note held over by the bank until after Jan. 1st. The $600 on 153 I think I can get held over. The taxes remain unpaid. Have S. remit me so that I shall get it by the 29th. He should tel. it by the 26th. I can then pay the taxes by the 30th & save the 2 per cent. for Jan'y. I shall need, to cover the whole, $10,500.

322 About ⅘ of 156 was filled to grade; ⅕th is a pond. Hoxie offers to furnish the pipe for a sewer at 18 from the P. H. sewer, but says he has no money to pay for the work. It will cost about $200. The sewer will be wanted some day, & I think I had better have it done. It is the cheapest way to get rid of the water, and I am in constant expectation of a notice from the board of health about it. The alley in 158 can't be opened until the Com'n's get an app'n. When that is done I hope to sell some of that property; 2 lots in it, side Mass. Ave. bet. 17 & 18, were recently sold for 60 cts. A very genteel house has gone upon S. W. cor. of P & Circle; 8 3-story bricks are being built on N bet. 20 & 21 aq. The cheapness of material is inducing building of small bricks in N. W. & 18 & 19, P & S, &c. Sq. 137 is being graded. I am in negotiation with some parties to build some houses on your ground and take houses in payment for the ground. Money on improved property can now be had at 7; on unimproved none seems to be had.

Truly yours, J. M. L.

323 EXHIBIT "K."

WASH., D. C., *Dec.* 17*th*, '77.

Thos. Sunderland.

DEAR SIR: The following is a copy of the letter I wrote Hillyer to-day. (See last exhibit.) Now, Hillyer's strong personal liking for K. & Jeffries I think prejudices him a little in K.'s favor. I don't find any fault with him for that, for I like to see a man stick to his friends, but as H.'s letter of the 6th, which he says he showed you & you concurred in, was written under a misapprehension of the facts as set in the bill & ans. filed in court, I thought you could best comprehend the matter if I sent you this copy of my letter to him, in which I point out some errors. If you have that letter of K.'s to me I refer to please send it to me at once. I think you may have it, as he says he forwarded my letters to you. You will get this on the 24th, & I hope you will let me — the $10,500 on the 26th, that I may get it on the 29th, as the 30th is Sunday, & the 31st is such a busy day it is hard to pay taxes, on which, if not paid be-

324 fore the 1st, there is an additional 2 per cent. added. Why don't you write me? When are you coming on?

Truly yours, J. M. L.

EXHIBIT "L."

MAY 2, '78.

HILLYER: There will be due 24 inst., as I wrote you Jan. 7, 12, '78, on sq. 115 $24,000 & in'st $720. & $24,720, & on same day the in'st on 155, $1,575. The note for 24 M has been hyporthucated for $11,500, which, with in'st $720, must be paid; the balance can lay until Aug. & perhaps longer. The in'st to Thompson will be due June 4th, $1,575; August Muller, June, 14, $240; Riggs, June 6, $375. I must rely on you for these amounts; then the bal. of taxes, all about $2,500, not to mention S.'s obligations. He says he can do nothing. If I fail to make sale his property must go. I shall make no promises until I hear from you, which I had expected long since. I have made every effort to borrow, but can't do it on this unimproved property. If taxes are not paid the property will be advertised in June.

Truly yours, J. M. L.

325 EXHIBIT "M."

WASH., D. C., 25 *May*, 1878.

T. Sunderland, Esq.

DEAR SIR: I have a proposition to fund the entire debt on the property of yourself & K. at 7 per cent., with a stipulation to release on sales being made. I want to submit a statement of cost of property, & for that purpose I want a verified copy of books sent you several years since made out by Mr. Bull. As he has something to do with this, if you would have a copy made & send the original he could certify to the correctness of the statement. I hope you will attend to this at once, as large payments are due & unprovided for. K. & O. never paid any part of that $2,715; they admit they owe S. & H.

Truly yours, J. M. L.

EXHIBIT "N."

GOSHEN, 30 *Dec.*, '79.

Mr. Bull.

DEAR SIR: Enclosed I send you two letters of J. W. Starr in relation to those notes & the lots on which they are secured of
326 the late Thos. Young. What is wanted by us is to secure the am't of the notes, or as near the amount as possible. Mr. Young made an assignment, but that don't effect this security. Please see Starr, & he may get the parties to pay the am't of the notes & take them & sell the lots under the trust & relieve us of any trouble about it. On Nov. 13, '79, the notes amounted to $2,100.66. It is not safe to make any contract to deliver the lots at any stipulated price. They had better be closed out in the spring under the trust if these parties won't purchase the notes outright. If they purchase the notes I would pay Starr his com.

Truly yours, J. M. L.

EXHIBIT "O."

GOSHEN, IND., 25 *May*, '80.

R. E. Pairo, Wash., D. C.

DEAR SIR: My eyes have been troubling me for some time, so that I have not been able to write, which is the reason for the delay in replying to yours of the 11th inst. If you will leave
327 me out of the suit I will put you in possession of an official paper that will enable you to settle the liability at once. O., by the advance in R. E., is probably responsible; I, at least, am indemnified, but want to avoid the expense of employing counsel. The lots were simply given away. Thanks for your kind consideration.

This request is not with a view of avoiding any obligations, nor shall it operate to do so.

I am sincerely yours, J. M. L.

WASHINGTON, D. C., *June 15th*, 1880.

James M. Latta, Esq., Goshen, Ind.

DEAR SIR: I enclose herewith three deeds for execution, two by yourself as trustee and one by yourself and Mr. Latta.

You will see that one of the deed- is to Hillyer and covers sq-. 66, 134, and 93. The next is to Sunderland and covers lots
328 in square 158. The 3d is from yourself & Mr. L. to Hillyer, & is for square 195. We expect to pay off all the indebtedness on these squares—that is, $35,000 to John W. Thompson, on sq-. 93, 134, & 158; $10,000 to Mr. Riggs, on sq. 195; $6,000 to Aug. Muller, on sq. 66, making a total of $51,000. Of course the deeds will not be used until the debts are paid.

I was sorry I did not see you when you were here recently.

Truly yours, JOHN BULL.

329 EXHIBIT "1."

This indenture, made this fifteenth day of June, in the year of our Lord one thousand eight hundred and eighty, between James M. Latta and Elizabeth J., his wife, of the county of Elkhart, in the State of Indiana (formerly of Washington, D. C.), of the first part, and Curtis J. Hillyer, of the city of Washington, D. C., of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of ten dollars, current money of the United States, to them in hand paid by the said party of the second part, the receipt of which, before the ensealing and delivery of these presents, is hereby acknowledged, have granted, bargained, and sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, and sell, alien, enfeoff, convey, and confirm, unto and to the use of the said Curtis J. Hillyer, his heirs and assigns, forever all those certain pieces or parcels of land and premises situate and being in city —

Washington, District of Columbia, and known and distinguished as original lots numbered eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), eighteen
330 (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), and twenty-five (25), in square numbered one hundred and ninety-five (195), the lots hereby intended to be conveyed comprising all of the north half of said square, including the alleys, except original lot numbered ten (10), together with the rights, easements, privileges, and appurtenances to the same belonging or in anywise thereto appertaining:

To have and to hold the said land and premises, with the appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of said Curtis J. Hillyer, his heirs and assigns, forever.

And the said James M. Latta does hereby covenant with said party of the second part, his heirs and assigns, that the said hereinabove-described land and premises, with the appurtenances, unto said party of the second part, his heirs and assigns, from and against all persons claiming by, through, or under said parties of the first part, except for existing incumbrance and taxes, the said parties of the first part *and* shall and will forever warrent
331 and defend by these presents; and, further, that any act or deed deemed by counsel learned in the law requisite and necessary the more perfectly to assure unto said party of the second part, his heirs and assigns, the said land and premises hereinabove granted the said parties of the first part and their heirs shall and will at all times, at the cost of the person requesting the same, do, perform, execute, and deliver.

In testimony whereof the said parties of the first part have hereunto set their hands and seal the day and year first above written.

——— ———. [SEAL.]
——— ———. [SEAL.]

Signed, sealed, and delivered in presence of—
——— ———.

STATE OF INDIANA, }
County of Elkhart, } ss:

I, a notary public in and for the district aforesaid, do hereby certify that James M. Latta and Elizabeth J. Latta, his wife, — to a certain deed bearing date on the fifteenth day of June, A. D. 1880, and hereto annexed, personally appeared before me, in the
332 district aforesaid, the said James M. Latta and Elizabeth J. Latta, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and said Elizabeth J. Latta, wife of the said James M. Latta, being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, acknowledged the same to be her act and deed, and declared

that she had willingly signed, sealed, and delivered the same and that she wished not to retract it.

Given under my hand and notarial seal this — day of ——, A. D, 1880.

—— ——,
Notary Public.

This indenture, made this 15th day of June, in the year of our Lord one thousand eight hundred and eighty, between James M. Latta, trustee, of the county of Elkhart, in the State of Indiana (formerly of the city of Washington, D. C.), of the first part, and Curtis J. Hillyer, of the said city of Washington, in the District of Columbia, of the second part, witnesseth: That the said party of
333 the first part, for and in consideration of the sum of ten dollars, current money of the United States, to him in hand paid by the said party of the second part, the receipt of which, before the ensealing and delivery of these presents, is hereby acknowledged, hath granted, bargained, and sold, aliened, conveyed, and confirmed, and by these presents doth grant, bargain, and sell, alien, enfeoff, convey, and confirm, unto and to the use of the said party of the second part, his heirs and assigns, forever all those certain pieces or parcels of land and premises situate and being in the said city of Washington, District of Columbia, and known and distinguished as lots numbered twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), forty-six (46), forty-seven (47), forty-eight (48), and forty-nine (49) of A. P. Fardon's recorded subdivision of square numbered one hundred and thirty-four (134); also all of square numbered ninety-three (93), in
334 said city; also all of square numbered sixty-six (66), in said city, save and except a certain part thereof described as follows, viz: Beginning at the point of intersection between the north line of "Q" street north and the northerly line of Massachusetts avenue and running thence northwesterly and along said northerly line of Massachusetts avenue three hundred and thirty-three feet and sixty-seven one-hundredths of a foot (333.67) to the easterly line of Boundary street; thence northeasterly and along the said easterly line of Boundary street one hundred and fifty (150) feet; thence southeasterly on a line parallel with said northerly line of Massachusetts avenue two hundred and thirteen feet and seven one-hundredths of a foot (213.07 feet), and thence south on a line parallel with Twenty-first street west one hundred and fifty (150) feet to the place of beginning, the part intended to be conveyed being the same part of square numbered sixty-six (66) conveyed to the said party of the first part by deed dated March 13, 1873, and recorded in — numbered 731, folio 350, one of the land records of the District of Columbia, together with the rights, easements, privileges, and appurtenances to the same be-
335 longing or in anywise thereto appertaining; to have and

to hold the said land and premises, with the appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of said Curtis J. Hillyer, his heirs and assigns, forever; and the said James M. Latta does hereby covenant with said party of the second part, his heirs and assigns, that the said herein-above-described land and premises, with the appurtenances, unto said party of the second part, his heirs and assigns, from and against all persons claiming by, through, or under said party of the first part, except for existing incumbrances and taxes, the said party of the first part and his heirs shall and will forever warrant and defend by these presents; and, further, that any act or deed deemed by counsel learned in the law requisite and necessary the more perfectly to assure unto said party of the second part, his heirs and assigns, the said land and premises herein above granted the said party of the first part and his heirs shall and will at all times, at the cost
336 of the person requesting the same, do, perform, execute, and deliver.

In testimony whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

—— ——, *Trustee.* [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

EXHIBIT "2."

UNITED STATES OF AMERICA.

STATE OF INDIANA, } *To wit:*
County of Elkhart, }

I, —— ——, a notary public in and for the county aforesaid, do hereby certify that James M. Latta, trustee, party to a certain deed bearing date on the fifteenth day of June, A. D. 1880, and hereto annexed, personally appeared before me in the county aforesaid, the said James M. Latta, trustee, being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this — day of June, A. D. 1880.

—— ——,
Notary Public.

337 EXHIBIT 3.

This indenture, made this 15th day of June, in the year of our Lord one thousand eight hundred and eighty, between James M. Latta, trustee, of the county of Elkhart, in the State of Indiana (formerly of Washington, D. C.), of the first part, and Thomas Sunderland, of the city of San Francisco, in the State of California, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of ten dollars, current money of the United States, to him in hand paid by the said party of the second part, the receipt of which, before the ensealing and delivery of these presents, is hereby acknowledged, has granted, bargained, and sold, aliened, conveyed, and confirmed, and by these presents does grant, bargain, and sell, alien, enfeoff, convey, and confirm, unto and to the use of the said party of the second part, his heirs and assigns, forever all those certain pieces or parcels of land and premises situate and being in the city of Washington, District of Columbia, and known and dis-
338 tinguished as original lots numbered three (3) and eight (8), the west half of original lot numbered nine (9), all of original lots numbered ten (10) and seventeen (17), and the west half of original lot numbered twenty-one (21), in square numbered one hundred and fifty-eight (158); together with the rights, easements, privileges, and appurtenances to the same belonging or in anywise thereto appertaining; to have and to hold the said land and premises, with the appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of said Thomas Sunderland, his heirs and assigns, forever.

And the said James M. Latta does hereby covenant with said party of the second part, his heirs and assigns, that the said hereinabove-described land and premises, with the appurtenances, unto said party of the second part, his heirs and assigns, from and against all persons claiming by, through, or under said party of the first part, except for existing incumbrances and taxes, the said party of the first part and his heirs shall and will forever warrent and
339 defend by these presents; and, further, that any act or deed deemed by counsel learned in the law requisite and necessary the more perfectly to assure unto said party of the second part, his heirs and assigns, the said land and premises hereinabove granted the said party of the first part and his heirs shall and will at all times, at the cost of the person requesting the same, do, perform, execute, and deliver.

In testimony whereof the said party of the first part hath hereunto set his hand and seal the day and year first above written.

—— ——, *Trustee.* [SEAL.]

Signed, sealed, and delivered in presence of—

—— ——.

UNITED STATES OF AMERICA.

STATE OF INDIANA, *County of Elkhart,* } *To wit:*

I, —— ——, a notary public in and for the county aforesaid, do hereby certify that James M. Latta, trustee, party to a certain deed bearing date on the fifteenth day of June, A. D. 1880, and hereto annexed,
340 personally appeared before me in the county aforesaid, the said James M. Latta, trustee, being personally well known to

me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this — day of June, A. D. 1880.

——— ———,
Notary Public.

I, Charles Etheridge, notary public, residing in the county of Bernalillo and Ter-itory of New Mexico, do certify that in pursuance of the annexed commission and notice came before me, at Albuquerque, in the county and Territory last aforesaid, James M. Latta, who was by me sworn to testify the whole truth of his knowledge touching the matter in controversy aforesaid; that he was examined and his examination reduced to writing in short-hand, and after being extended in long hand was subscribed by him in my presence at the place in that behalf first aforesaid, and the said deposition is now herewith returned.

Given at Albuquerque, in the county of Bernalillo and Ter-itory of New Mexico, on this the fifth day of April, 1882.

CHARLES ETHERIDGE,
Notary Public, Bernalillo Co., Ter. of — Mexico.

341 *Affidavit of Thomas Sunderland. Filed Oct.* 11, 1882.

TERRITORY OF NEW MEXICO, }
County of Bernalillo, } *ss:*

Thomas Sunderland, being duly sworn, says that he is one of the complainants in the suit of Sunderland and Hillyer *vs.* James M. Latta, and is also the complainant in the suit of Thomas Sunderland *vs.* James M. Latta, both in equity and instituted in the United States circuit court in the State of Indiana, and that he left the city of Washington, District of Columbia, to attend the taking of the deposition of James M. Latta and to cross-examine him; that owing to the failure to make connection with the west-bound train at Kansas City, Mo., he did not reach the city of Albuquerque, New Mexico, until the morning of the 23rd inst., when he was informed by W. B. Childers, Esq., who, he was informed and believes, acted as attorney for said Latta in the taking of said depositions; that said deposition
342 was completed, and that said Latta had left for his present home on the line of the Atlantic and Pacific railroad, between which place and Albuquerque there is direct communication by telegraph and mail; and affiant is further informed and believes that said Latta was informed both by telegraph and mail of the presence of affiant in said city of Albuquerque for the purpose of cross-examination of said Latta, but up to the present time, March 27th, the said Latta has failed to appear for said purpose; that affiant has remained in this city from the 23d to the 27th inst. for the sole purpose of cross-examining said witness; that affiant is informed and believes that the direct examination of said Latta was taken by a short-hand reporter and not by the notary acting as examiner or

commissioner, and that said examination was taken in short-hand and afterwards copied by Bernard Rodey, and that no notices
343 was ever served on the complainant, nor, as he believes, on his co-complainant, to produce the original letters alluded to by said Latta; that the pretended copies of letters made exhibits in and to said depositions are not copies of the originals, but at least copies of copies, and this affiant therefore objects to the reading of said deposition on the trial of this cause.

THOS. SUNDERLAND.

Subscribed and sworn to before me, Chas. Etheridge, a notary public in and for county of Bernalillo Territory of New Mexico, this 27th day of March, A. D. 1882.

[SEAL.] CHAS. ETHERIDGE,
Notary Public.

Order Extending Time to Take Depositions. Filed Oct. 27, 1882.

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND & HILLYER
vs.
KILBOURN & LATTA. } No. 7764.

On this the 27th day of October, A. D. 1882, by consent of counsel for complainants and defendants in open court, it is ordered
344 that the time for taking testimony in behalf of the defendants be, and the same hereby is, extended to the thirteenth day of November, 1882, and that ten days then be, and is hereby, allowed to the complainants for taking their testimony in rebuttal.

A. B. HAGNER,
Asso. Justice.

Order Requiring Kilbourn to Answer Interrogatories. Filed Oct. 27, 1882.

In the Supreme Court of the District of Columbia.

SUNDERLAND *et al.*
vs.
KILBOURN *et al.* } Equity No. 7764.

On motion by complainants' counsel, Messrs. Hillyer & Ralston, relative to the answering on cross-examination of defendant Kilbourn of certain questions which he has heretofore refus*ing* to answer, it is ordered that said Hallet Kilbourn be required, and is hereby required, to answer the questions heretofore put him by complainants' counsel and which he has declined to answer, as shown by the report of the examiner in chancery.

A. B. HAGNER,
Asso. Justice.

345 *Motion for Order Requiring Olmstead to Answer, &c. Filed Nov.* 10, 1882.

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND and HILLYER
vs.
KILBOURN, LATTA, and OLMSTEAD. } No. 7764.

Prayer for order directing the answering of certain questions by J. F. Olmstead, def't.

Now, on this day, comes the complainants, by J. H. Ralston, their solicitors, and respectfully show to this honorable court that the defendant, J. F. Olmstead, has refused to answer certain questions asked him and to produce certain book entries called for in the above-entitled cause before W. T. S. Curtis, examiner, as will appear from the report of said examiner, filed herein November 9, 1882, and respectfully move this honorable court for an order requiring said John F. Olmstead to appear before this honorable court and show cause, if any he have, why he should not answer said questions and produce said entries, or in default thereof be considered as in contempt.

J. H. RALSTON,
Compl'ts' Solicitor.

346 *Order Requiring Olmstead to Answer, &c. Filed Nov.* 10, 1882.

In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND and HILLYER
vs.
KILBOURN, LATTA, and OLMSTEAD. } No. 7764.

Order directing that defendant, J. F. Olmstead, show cause why he should not answer certain questions and produce certain entries or else stand in contempt.

Ordered, this 10th day of November, 1882, that said defendant, J. F. Olmstead, be and appear before this honorable court on the 15th day of November, 1882, then and there to show cause, if any he have, why he should not answer certain questions heretofore put to him in the above-entitled cause, which he has refused to answer, as appears from the report of the examiner herein filed, and produce certain entries which he has refused to produce, as per said report, provided a copy of this order be served upon the said Olmstead on or before the 13th inst.

A. B. HAGNER,
Asso. Justice.

347 DISTRICT OF COLUMBIA, } ss:
County of Washington, }

In the Supreme Court of the District of Columbia. In Equity.

HILLYER and SUNDERLAND
vs.
KILBOURN and OLMSTEAD. } No. —, Doc. —.

Be it remembered that at an examination of witnesses begun and held on the — day of ——, A. D. 187–, and continued from time to time by adjournment until the same were completed, I, John J. Johnson, an examiner in chancery, did cause to be personally present at the office of Mr. Hillyer and Olmstead, in the city of Washington, in said District, the within-named witnesses, to testify on the part and behalf of the complainants in a certain cause now depending in the supreme court of the District of Columbia, wherein Hillyer and Sunderland — complainants and Kilbourn and Olmstead — defendants.

J. J. JOHNSON,
Examiner in Chancery.

348 Met pursuant to adjournment at the time and place named in said adjournment.

Present: Mr. J. H. Ralston, for plaintiff-, and Mr. Enoch Totten, for defendant-.

Deposition of Curtis J. Hillyer, Taken on Behalf of Plaintiff-.

Direct examination by Mr. J. H. RALSTON:

1 Q. Are you one of the complainants in this action?

A. I am.

2 Q. Where did you reside in 1872, 1873, 1874, 1875, and 1876?

A. In the city of Washington.

3 Q. How much of that time were you actually living in Washington?

A. I was living here, I might say, all the time, but I was away in the fall of 1872, about two or three months, in Europe. I was also away in 1873, from about April till October, in Europe. I was also in Europe in 1874 about two months, July and August, I think, and I made each year one trip to the Pacific coast, my absence on those trips varying from four weeks to two months. The balance
349 of the time I was in Washington.

4 Q. What was the extent of your acquaintance with the firm of Kilbourn and Latta prior to May, 1872?

A. I came to Washington to live in the fall of 1870. Some time in the spring or summer of 1871, I was introduced to the firm, or some member of it, and I had some business with them in the year 1871.

5 Q. What knowledge had you as to the value of real estate in Washington prior to that time—May, 1872?

A. I had only a very general knowledge. I had bought, in connection with Mr. Stewart, three pieces of property, unimproved real estate, in the northwestern part of the city, in the — 1871, and in that way I had learned generally something as to the values of real estate in that part of the city, and, by inquiry, knew in a general — the value in other parts.

6 Q. What were the inducements which led to the formation of the enterprise for the purchase of real estate by yourself, Mr. Sunderland, and Mr. Stewart in 1872?

A. Well, we all had some money to invest—Mr. Sunderland a good deal and Mr. Stewart more than myself—and we thought the
350 city of Washington was going to improve. It had been settled, as we supposed, definitely, that this was to remain the capital of the country, and as the country was growing very rapidly, and it had not, as yet, exerted its proper influence, as we thought, upon prices in the capital, and we thought that the improvements that had been inaugurated and were being prosecuted would probably begin a new era in the value of real estate here. We selected the northern part of the city, because we thought that values there were relatively less than they ought to be, inasmuch as we looked upon that part as the most desirable for residences. For this reason we determined to go in together and buy a considerable amount of unimproved real estate in that part of the city.

7 Q. How came you to employ the firm of Kilbourn and Latta in respect to the proposed purchases?

A. We deemed it necessary to employ some one, because we did not deem ourselves competent to attend to making the purchases judiciously ourselves. We selected that firm mainly, I think, on
351 the recommendation of Senator Stewart, and because I, myself, having been acquainted, to some extent, with them, deemed them a very enterprising firm of brokers. I had a good deal of confidence in their ability, and upon talking with them they represented—which representation we believed—that they had peculiar facilities for making purchases of property in that section of the city.

8 Q. What were the character and terms of the employment of that firm with respect to the purchases you name?

A. We employed the firm to act as brokers for us and as our agents in making purchases of such property as should be considered desirable. We agreed to furnish them with money and they agreed, when property was designated that might be purchased to advantage, to investigate the matter and negotiate concerning the purchase and inform us what the property could be purchased for and make the purchase. They were to act in this matter strictly as our agents. The terms of the employment were that they were to have commissions upon the property purchased—the regu-
352 lar broker's commissions. In this connection it was stated by the firm that oftentimes they would be able to make the seller pay them commissions as a further reduction of the price which he had fixed upon the property, and when they could get

them in that way from the seller we should not be charged with them.

9 Q. Did you or your associates ever have any direct communication or negotiations with the owners of the property from whom the purchases were made?

A. We did not, so far as I know. I never did myself, and I saw my associates almost daily and I never heard of their doing it. In fact it was especially enjoined upon us by the firm of brokers that it would be very injudicious for us to have any communication with the owners of the property, for the reasons that it would be likely to make them advance upon the price, and we were advised to leave the whole matter of fixing the price and of negotiating in respect to it to the firm, and this advice we followed.

10 Q. Did you ever have any other agent in making any
353 of these purchases than the firm of Kilbourn and Latta?

A. We did not, except in respect to one part of the property—certain lots in square 195. Here the brother of Col. Berret, I think it was, or Col. Berret himself, was employed to make the purchase. This was done because it was represented to us by some one that Col. Berret had the matter in his hands and could procure the property cheaper than anybody else. We talked about the matter of employing Col. Berret with the members of the firm of Kilbourn and Latta, but the purchase was actually made by Col. Berret and the commissions paid to him. The cash payment, however, was made by the firm of Kilbourn and Latta on that property in the same manner as in the other.

11 Q. How far were you and your associates consulted before the conclusion of the bargains for the purchase of these several pieces of property?

A. We were always told what the property could be purchased for, and we were always told that it was the lowest price at which the firm supposed that it could be obtained, and we always
354 took their advice upon a proposition as to whether it was best to make the purchase upon those terms, and upon these representations and upon this advice we determined whether or not to make the purchase, and, as I remember, in each case where we were advised by the firm that in their judgment the purchase was a good one, we did take the property.

12 Q. Did you know that in any of these purchases the firm of Kilbourn and Latta or either member of that firm were the owners or the sellers of the property sold to you and your associates?

A. I did not know it and I never suspected it. I never heard from any member of the firm in relation to any of the property an intimation that they were the sellers of it.

13 Q. When were you ever informed that they or either of them were in any way interested in the property purchased otherwise than as your brokers?

A. I was never so informed, and I never knew or suspected such to be the case until within the past year.

14 Q. Upon whose judgment did you rely in making these purchases?

A. We relied partiality upon our own judgment and partially upon the judgment of the brokers. We relied upon our own
355 judgment in a general way as to the general value of property in the neighborhood or locality of the proposed purchase, but in respect to the particular tract and as to the price for which that could be obtained and as to the advisability of making the purchase of that particular tract upon the terms proposed we relied exclusively upon the judgment of the brokers.

15 Q. What do you know of the negotiations for the purchase of square No. 115?

A. I know nothing whatever in respect to the square more than I know and have stated in reference to the property generally, except that I know that it was one of the squares which, when we first commenced to talk with the brokers in reference to purchasing property, was mentioned by us as, in our judgment, a very desirable piece of property to purchase, for the reason that it was all vacant and was yet nearer to the improvements than any other square which he had in view.

16 Q. What do you know of the negotiations for the purchase of the lots in square No. 158?

A. I know about that just the same as I have stated about
356 square 115, except that I think that we designated that property later than we did square No. 115. We considered all property on Massachusetts avenue as desirable where it could be obtained at a reasonable price.

17 Q. What with regard to the lots in square No. 155?

A. Just the same as I have stated in regard to square 115 and the lots in square 158.

18 Q. In whose name was the title to these several purchases taken?

A. In the name of J. M. Latta, trustee. It was agreed that they should all be taken in the name of Latta as trustee, but he did in fact take the title to one piece of property, square 195, in his own name without the addition of the description of trustee.

19 Q. For what reasons was the title to this property taken in the name of J. M. Latta as trustee?

A. Mainly for the reason that, inasmuch as the real purchasers were not to be known in this transaction, the property should not be taken in their names, but should be taken in the name of Latta as trustee. This was done upon the suggestion of the firm.
357 It was also suggested, either at the commencement or during the progress of the purchases, it would be more convenient to have the property in the hands of some person who was constantly in the city for the making of conveyances in the case of a resale, which was contemplated.

20 Q. After the purchase of this property and up to December, 1876, did the firm of Kilbourn and Latta render any services in connection with the property purchased; and, if so, what were they?

A. Immediately after the purchase of the property it was left with the firm of Kilbourn and Latta, as brokers, for a resale whenever it could be made, in our judgment, advantageously. While the prop-

erty remained in their hands in this way up, at least, to the first of January, 1877, and during that time as deferred payments on the property became due or as taxes became due, they called upon us or some one of us for money, which was forwarded to them, which money they disbursed, and of this they kept an account in their office, and from time to time from their books notified
358 us of future payments which within some short period would become due. I know of no other services which were rendered by the firm during that period.

21 Q. Subject to what arrangement or agreement, if any, were these services rendered, so far as you know?

A. I never knew of any agreement in respect to it prior to 1875. I had understood that these services were being rendered by them as brokers in consideration of the property being left in their hands for sale, but, so far as I remember, nothing was ever said about it until some time in 1875, when I had a conversation with Kilbourn and Latta in reference to the property. I was about to go to San Francisco and went to see them before going to talk over prospects. The prospect for sale at that time seemed somewhat gloomy, and they stated that there was at that time no demand for property of that kind, at the same time saying they thought business would revive very soon. I said to them, and the remark was suggested by the fact that the sale of the property seemed to be rather remote, that they were having some trouble in keeping our accounts and receiving and disbursing our money,
359 attending to taxes, &c., and that I wished to know whether they supposed they were entitled to any compensation independent of the commissions on their sales—that is, the sales which might be made. I do not remember the exact language employed, but it was substantially that, as I remember. Mr. Kilbourn did not express any opinion, at least any positive opinion, in regard to the matter. Mr. Latta suggested that the firm were not only having some, and, as he represented it, very considerable, trouble, but that they would be very useful to us in disposing of the property, and that he thought they ought to be entitled to additional compensation. I think he made some suggestion also as to the amount of the compensation, but that I do not remember, or at least I do not remember what it was. I think it was an increased percentage upon the sales of the property that were to be made, but I am not sure. At any rate, I stated that I did not consider that the services that were being rendered were considerable; that they were no more than any broker would render who had property in his hands for sale, and that we ought not to be called upon to pay any-
360 thing in addition to the commissions which might be realized upon sales, and I stated to them I was satisfied any other broker in the city would be very glad to take the property out of their hands and do what they were doing for the chance he would have of selling it. There was very little said in conversation upon this subject, but the result of it was, and it is that which I remember distinctly, that they should go on and perform their services and should charge us nothing for them except that if, as they then sug-

gested to be probable, we should require to make loans in order that the property might carry itself thereafter they should charge the regular commissions upon making the loans, and also that the property should be left in their hands for sale and they should charge the regular commissions if sales were made.

22 Q. Did this conversation relate to past services or to future or to both which you have mentioned?

A. It mainly related to future services. Probably it might in one sense have covered what had been past, but I do not think there was anything said in the conversation in reference to any charge for past services. I am very certain there was nothing said
361 in reference to an annual charge for services.

23 Q. Did you in this conversation or at any other time make any suggestion as to the amount of compensation?

A. I did not. I distinctly repudiated the whole idea of our making any compensation to them for these services, and if I did not say it directly I said sufficient so that it must have been understood by them that if they were insisted upon we would take the property and put it into the hands of other brokers, who I was satisfied would attend to it in that way.

24 Q. When did you first learn that a charge for care and management of this property had been made or was intended to be made by the firm of Kilbourn and Latta?

A. Either in the latter part of June or the beginning of July, 1878. Mr. Sunderland and myself came on here from the Pacific coast, and shortly after our arrival we requested that an account current should be made of all the transactions in respect to this property up to that date, and I will state that we had never received any such account as that since 1872. After some delay the accounts were rendered to us, and in the account which has been
362 already offered in connection with the deposition of Mr. Sunderland we saw a charge for care and management, some sixteen thousand odd dollars. That was the first time that I knew anything of any such charge. I had never before that time heard anything said in any way intimating that it was the intention of the firm to charge us for services in the care and management of this property. We were both very much surprised at it. We went very shortly after and protested both to Kilbourn and Olmstead, and also to Mr. Latta, and told them substantially that in our judgment the charge was an outrage and that we would not pay it. I stated to them at that time the agreement which had been made in 1875. Mr. Olmstead said he did not know anything about it. Mr. Kilbourn remembered there being something said about it, but did not think there was any agreement, and Mr. Latta said he remembered the conversation, and that there was no agreement made in that conversation that they should charge nothing for their services. Mr. Sunderland and myself then, before I went away, employed Mr. Walter S. Cox as attorney to commence suit against the firm.

363 & 364 Mr. TOTTEN (to witness): You do not know that fact, do you?

The WITNESS: Yes; I was myself at the office when we employed

him. We employed him to commence suit and recover back from the firm this amount, and also recover from Latta some amounts which had been charged by him, and also a suit by Mr. Sunderland to recover amounts which had been charged by the firm and Latta against him individually of the same general character, and when I left here it was understood that the suit would be commenced without any unreasonable delay. I wish to state also with reference to this agreement that I mentioned it to Mr. Sunderland shortly afterwards when I went to San Francisco, and neither he nor I at the time regarded it as of any considerable importance, because we did not suppose that if a charge was to be made for the services that it would have amounted to any considerable sum, as it was more a matter of book-keeping than of anything else, and that if we had employed persons who had no other relation to the property that the compensation would have been very little.

365 At this point the taking of testimony was adjourned till to-morrow (Oct. 19) at the same place.

J. J. JOHNSON, *Examiner.*

Met pursuant to adjournment at the time and place named in said adjournment.

Present: Mr. J. H. Ralston, for the complainants, and Mr. Enoch Totten, for the defendants.

Cross-examination of Mr. C. J. HILLYER by Mr. TOTTEN:

1 X Q. What is your business?

A. I am a lawyer.

2 X Q. Where do you reside?

A. I reside now in Washington.

3 X Q. How long since you have lived in Washington before?

A. I lived in Washington from the fall of 1870 up to 1876. I lived in Nevada from 1876 up to six weeks ago.

4 X Q. You are now a resident of the District of Columbia?

A. Yes.

366 5 X Q. Where did you live in the beginning of the year 1872?

A. In Washington.

6 X Q. Whereabouts?

A. On Capitol Hill, I think.

7 X Q. How long did you live there?

A. I went there in 1871, I think, or in the fall of 1870, I am not sure which. I lived there till about 1873.

8 X Q. What was the business that Mr. Stewart, your associate, was engaged in in 1872?

A. He was United States Senator from Nevada.

9 X Q. Is he a lawyer by profession?

A. Yes; he had formerly been my law partner before he came to the Senate.

10 X Q. Where?

A. In Virginia City.

11 X Q. How did you come to select the northwestern part of the city as the place for investing money in the — 1872?

A. Well, by looking over the city and comparing that part with others it seemed to me as if the improvements would eventually go out that way, especially as far as residences were concerned. It was high ground. It was—a great deal of it—clear ground or occupied by very small houses.

367 12 X Q. Was it your suggestion, or whose was it, that you should invest there?

A. I do not know just how my opinion was formed about it. We talked the matter over considerably and I do not know on whose suggestion it was.

13 X Q. Personally you were in favor of investing on Capitol Hill, were you not?

A. When I first thought of buying, in 1871, I was very favorably impressed with Capitol Hill, but I got out of that idea very soon. We became convinced very soon that that was not the place to buy.

14 X Q. To what extent did you gentlemen expect to invest money in real estate?

A. I do not think there was any definite amount fixed, but we expected to invest very considerably. Mr. Sunderland at that time was a wealthy man, as I looked at it. He was worth from seven hundred and fifty thousand to a million dollars and Mr. Stewart was worth two or three hundred thousand dollars and I was worth a little. I was worth enough to want to make some investment and we determined to buy pretty largely, but there was not any definite amount mentioned, so far as I know.

368 15 X Q. In your answer to the eighth interrogatory of your direct examination you state the terms of the employment of Kilbourn and Latta. Will you state now where that arrangement was made? I want to know the place where you were and the day when you did it, and I want to know the individuals who were present at the time the terms of the employment were concluded.

A. The place was in the office of Kilbourn and Latta; the time I do not know exactly; it was, I think, either in the month of April or the fore part of May, some time. I do not remember just who were present when we first engaged them. We had a number of interviews about it, and I would not pretend to remember the details of any particular interview.

16 X Q. Were the terms of this business settled between you at one interview?

A. I think they were, so far as this—that in one interview we told them we intended to make these purchases and had concluded to employ them to do it. To that extent I have no doubt it was settled in one interview; whether anything more than that was done at one interview, I could not say.

17 X Q. Do you know how many interviews you all had together?

369 A. I have no idea, but there were a good many.

18 X Q. Were Mr. Sunderland and Mr. Stewart present atthe first interview?

A. I could not say with certainty, but I think they were all present when we employed the firm.

19 X Q. Who did the talking on the part of Kilbourn and Latta?

A. I have no recollection.

20 X Q. Did you have a general "sit-down" and talk over the matter?

A. I do not remember. It did not take much talking. We told them we would employ them, and they were glad of it.

21 X Q. You told them that you had made up your minds to buy real estate and to employ them as brokers?

A. Yes.

22 X Q. They were doing a great deal of business at that time, were they not?

A. There were the usual indications that they were doing a good real estate business.

23 X Q. They were doing an active business?

A. I thought they were.

24 X Q. They were going pretty actively about the city?

A. Yes.

25 X Q. Do you know how many clerks they employed?

370 A. I do not know.

26 X Q. There was at least one besides the members of the firm, was there not?

A. They employed Mr. Bull as their book-keeper. Perhaps they employed others; I do not remember. There was also a boy, I remember, who drove a carriage.

27 X Q. What do you know about the transaction through which you obtained square 195? I want what you know personally.

A. Well, I only know this—that it was suggested by somebody, for some reason, that that square had better be purchased through Col. Berret or his brother; that he had some relations with the parties which would enable him to get it upon better terms, and it was determined that that should be done, and it was done.

28 X Q. Did you consult Kilbourn and Latta or Olmstead about it?

A. I think we did before any purchase was made.

29 X Q. What did they say about it?

A. I do not recollect what they said. I do not remember whether they approved or disapproved. I know that after it was done either they told me or Sunderland told me that they had said they

371 thought they could have got it cheaper.

30 X Q. How much did you pay Berret?

A. My recollection is that we paid him a thousand dollars.

31 X Q. Who were the owners of the square?

A. I do not know.

32 X Q. Don't you know now?

A. No; I think Riggs was, but I do not know.

33 X Q. Did you pay more for that than for the other squares?

A. Yes; we paid more per foot. I considered it more valuable, and so did my associates, so far as I know.

34 X Q. What do you think of it now?

A. I think very highly of it now.

35 X Q. Do you think it was the best purchase you made?

A. I do not think it was the best purchase we made. I do not know, however, about our joint purchases.

36 X Q. You were taken in a little on square 195, were you not?

A. No.

37 X Q. You do not remember that Kilbourn and Latta advised against it at the price offered?

A. I do not know that they did nor that they did not.

372 38 X Q. Were you present in this city during the twenty-three days within which all these purchases were made by you gentlemen?

A. I was here during all that time, and I think also in the months of May and April before I was here, for I think the employment of the firm of Kilbourn and Latta commenced as early as the first of May, and perhaps in April.

39 X Q. Of what year?

A. The year 1872. It was some time after that before we actually bought any property.

40 X Q. Did you make any efforts in any way to make yourself acquainted with the value of real estate in Washington?

A. In a general way I did, but not in detail at all.

41 X Q. Did you personally examine these various purchases before concluding sale?

A. I personally examined all the larger ones and knew generally the location of the smaller ones, but whether I examined the particular locations of the smaller purchases I could not say. I think not in all cases.

42 X Q. Did Mr. Stewart?

A. I think he knew just what I did about it. Of course, he had seen all this northwestern part of the city and knew generally the locations of the lots which we purchased.

373 43 X Q. In all these various purchases you relied finally upon your own judgment, did you not?

A. We relied finally on our own judgment as to whether we should buy or not. I should say that in coming to that determination we did not rely fully on our own judgment as to the particular purchase.

44 X Q. Do you remember the circumstances connected with the purchase of square 158?

A. I only remember that we thought property in that neighborhood desirable, and that we talked it over with the firm of Kilbourn and Latta, and they agreed with us, and that we requested them to see what lots could be purchased and to negotiate concerning the price.

45 X Q. Did not you know before you made these purchases that those lots which you did buy were standing in the name of Olmstead at the time?

A. I did not.

46 X Q. Do you not know it now?

A. I do not.

47 X Q. You never stopped to inquire who the owner was, did you?

A. I did not.

48 X Q. You stated in your direct examination in answer to the twentieth interrogatory substantially that the firm of Kilbourn and Latta up to the year 1876 did not render any service about
374 this property which stood in your name. Were you here from the time after the conclusion of these services up to 1876?

A. I said in my direct examination just at what time I was here in Washington, and said two or three times I was away from Washington during that period.

49 X Q. You were away most of the time during that period, were you not, between 1873 and 1876?

A. No; I was here most of the time.

50 X Q. Who looked after the taxes and took care of the old material during the progress of the street improvements under the Board of Public Works?

A. So far as old materials are concerned, I did not know at that time that there were any or that anybody looked after them. That was a matter of no great importance. As to the taxes, I presume that the officers looked after the assessment of the taxes, and that the firm of Kilbourn and Latta paid them.

51 X Q. Who looked after the assessments to see that the board of assessors did not overestimate or overvalue the property?

A. I did not know then and do not know now that anybody did, and I thought then and think still that nobody could influence that question very much in respect to that class of property. As
375 I understood the system of assessing property, property in the same neighborhood must be assessed at the same values, and I did not suppose there was any room for representation or influence about it.

52 X Q. Do you not know as a matter of fact that they were not assessed alike in any degree and that some pieces of property were assessed at a small value, while adjoining property was assessed at a high figure?

A. I presume, although I do not know, that different values attached to different lots in the same square, according to the position of the lot, but I never supposed, and do not now, that there was any arbitrary distinction made by the board of assessors.

53 X Q. Do you know that excessive values were put upon some of your property and that the valuations were reduced upon the representations of Kilbourn and Latta?

A. I do not.

54 X Q. If such a thing was done by them you know nothing about it?

A. I do not.

55 X Q. As a matter of fact, your association has never paid any

commissions to Kilbourn and Latta and Olmstead, unless it is the little item of three hundred and thirty-nine dollars on square 67, have you?

376 A. That is the only commission that is charged in their account, and, so far as I know, the only one that was paid directly by us upon the purchase of that property.

56 X Q. Were you under any obligations to confine yourself to the services of the firm of Kilbourn and Latta in making your purchases?

A. We were not.

57 X Q. And they were under no obligations to serve you unless they wanted to?

A. They were not—that is to say, that at any time we could have said to the firm that their services were no longer required, and at any time they could have said to us that they did not propose to serve us any longer.

58 X Q. Well, this purchase of square 195 was in the midst of their employment. Were you under any obligations to go to them at that time?

A. I think probably we were under no legal obligations, but under what might be called moral obligations, to consult with them about it before going to any other brokers, and I think we did; and it was only for special reasons that we went to anybody else in reference to the purchase of that square. I did not know myself at the time what those reasons were definitely.

59 X Q. Who paid that thousand dollars to Berret?

377 A. I presume it was paid by Kilbourn and Latta, but I do not know.

60 X Q. Who agreed to pay it—you or Mr. Sunderland?

A. I do not remember. We all agreed to do it. Berret was to be paid commission. He acted as our agent in that matter, as he represented he could get the property at a cheaper price than we could otherwise get it, and we thought that was so.

61 X Q. Were you aware that the firm of Kilbourn and Latta or the three gentlemen comprising that firm were interested in buying and selling real estate on their own account at the time you were purchasing?

A. I was not.

62 X Q. Did you know they were interested in the real estate association known as the Real Estate Pool?

A. I did not know it.

63 X Q. Did you know they were interested in the association of which the Hon. N. P. Chipman was chief member?

A. I did not. I knew they were purchasing for a real estate pool, but I did not know for a long time afterwards who composed that pool, nor that the firm of Kilbourn and Latta had any other connection with them than that of brokers. They did not so

378 state to me. As far as Chipman was concerned, they said they had some orders from him for the purchase of real estate, and that was all I knew about it. I took no pains to inquire about it and knew nothing more definite than that.

64 X Q. What was the condition of the real estate market in May and June of the year 1872 in this city?

A. Well, I think that during those months it was quite lively, but I think we did a good deal to make it lively; outside of ourselves and this pool, I did not know of anybody at that time that was making large purchases of property on speculation, and I have never been able to learn that there was any great purchasing of real estate—that is, unimproved real estate—outside of our own purchases. The firm of Kilbourn and Latta represented that things were very lively.

65 X Q. Did you not think they were?

A. I did not at the time. I thought they were pretty lively; but when we stopped buying I think the excitement pretty much died away.

66 X Q. Then the real estate market only lasted twenty-three days?

A. Well, I do not think, so far as I knew, that there was anybody particularly anxious to buy after we stopped.

379 67 X Q. Did you watch the publication in the daily papers?

A. No; I only knew what I heard people say.

68 X Q. Ingersoll was buying pretty extensively about that time, was he not?

A. No, sir; I never heard the name of Ingersoll mentioned in connection with the buying of real estate. He might have bought, but I knew nothing of it. He a long time afterwards bought property south of square 115.

69 X Q. Was there not a man by the name of Benjamin F. Gilbert who was buying extensively?

A. No.

70 X Q. Was not George Burgess making pretty heavy purchases about that time?

A. No; not to my knowledge.

71 X Q. Do you not know that a man by the name of James M. Orms was buying very extensively at that time?

A. I never heard of it at the time and do not know it now.

72 X Q. Don't you know that Boughton and Moore and Bouton and Merrill were buying very extensively?

A. I did not know it then and I do not know now.

73 X Q. Don't you know that a large amount of real estate was bought by John N. Hubbard at that time?

380 A. I never knew anything about it, and don't now.

74 X Q. Don't you know that the houses near the Catholic church, called St. Aloysius church, were built up during that period of time, along in 1871 and 1872?

A. I knew there was a good deal of building going on up that way.

75 X Q. Shepherd was building all over the city at that time, was he not?

A. I should have said that he was building in the northeastern part of the city, but I am not certain of it.

76 X Q. Moses Kelley was buying real estate, was he not?

A. That I did not know anything about.

77 X Q. R. M. Hail was engaged also in the business of buying and selling real estate just at that time, was he not?

A. Perhaps so. I don't know anything about it, and did not then.

78 X Q. Do you know, or don't you know, that it is a fact that there were more transfers of real estate during the year 1872 than ever before or since in Washington?

A. No; I did not know the fact.

79 X Q. Do you know it now?

A. No; I do not know it now. I have never examined
381 into it. It might be so and it might not, so far as I know.

80 X Q. Well, you think, then, that Kilbourn and Latta were doing a lively business for your association, and that was all, do you?

A. Well, I think our business made considerable of the excitement with them.

81 X Q. Then their excitement only lasted twenty-three days. Short-lived happiness, was it not?

A. Well, it lived twenty-three days, according to that. I don't know whether it was shorter or longer than that.

82 X Q. You have had your attention invited one way or another to a conversation between you and some of the members of the firm of Kilbourn and Latta about the compensation which they should or ought to receive for their services connected with your business, and that this conversation took place in 1875 or 1876, or about that time. Do you remember a conversation where it was proposed to make a charge of one per cent. for the services of Kilbourn and Latta?

A. I do not; and there never was any such conversation with me.

83 X Q. Was there ever any such proposition made to you or statement that it was worth one per cent. on the purchase price of your property to do what they did for you during the
382 time of the purchase, and what they did after the purchase was made in taking care of your business and your property here? Was there ever any such conversation?

A. There was no conversation of any kind ever had by me, and, so far as I know, by my associates in reference to the matter, except the one which I spoke of in my direct examination, which was had in 1875.

84 X Q. Well, what was that?

A. It was as I stated there. The subject came up in connection with our talk about the chance of selling the property, *et cetera*. I do not remember the details of that conversation. It was very short. I don't suppose it occupied ten minutes altogether. It was not a matter I attached a great deal of importance to, and at the time I did not suppose the firm did, but it ended in an agreement that they would go on and keep these amounts and proceed to disburse this money as they had done without making any charge to us except the regular commission upon loans that they might make for us and regular commissions for the sales.

85 X Q. Did you expect to be borrowers of money when you employed, as you call it, the firm of Kilbourn and Latta?

383 A. No, we did not, when we employed them.

86 X Q. Then there was nothing said as to their securing loans for your benefit?

A. No.

87 X Q. You complain in this proceeding that these gentlemen made profits by selling you land; now, you say that was not part of the arrangement nor allowable by the terms of it, and you also say that they were to get their commissions of somebody else; so you expect to employ them without paying them?

A. No. We employed them and agreed to make them our brokers for all this property, but either at the time of the first employment or shortly afterwards, when the subject come up, they stated that they could after get commissions from the sellers which would be deducted by them after they had fixed the price they intended to stand upon, and that where that could be done then they would not charge us a commission. They did not represent nor was there any reason for us to infer from that or from anything they said that they expected to stand in any confidential relations with the

384 sellers of the property or their agents, but they represented to us that in all cases they dealt with the sellers at arm's length, and that it was after they had got the sellers down to their lowest price that they could get them, to take off the commissions which would reduce the purchase price of the property to us.

88 X Q. How long after the proceeding had been started was this?

A. I cannot say; and I will say further that until their account came in I had no idea myself as to what cases they had charged us commissions in. I know nothing about it except what I learnt from the account.

89 X Q. Well, you found out from the account that they only charged you three hundred and thirty-nine dollars ($339.00), did you not?

A. I found that they only charged us commissions on one piece of property.

90 X Q. You never made any complaint on account of the absence of commissions, did you?

A. No, I did not.

91 X Q. You spoke in one of your statements in answer to the twenty-first (21st) question about future services of the firm. What future services did you mean when you said that?

385 A. I meant their services in the future in doing just what they had been doing, and possibly, as was contemplated then, in making loans for us. About that time we had begun to think the property should take care of itself.

92 X Q. You did not intend to sell immediately, did you?

A. We intended to sell the property. We bought it and put it into their hands to sell just as soon as there should be a satisfactory profit.

93 X Q. Satisfactory to whom?

A. Satisfactory to us. The firm constantly thought or represented, and I presume thought, that it would not at any time be long before business would revive and property come into the market and we would be able to sell at a good profit.

94 X Q. When you went to Europe did you order them to sell?

A. No.

95 X Q. Did you order them not to sell?

A. No.

96 X Q. What did you tell them?

A. We left the property in their hands for sale as brokers,
386 presuming whether it was said or not——

97 X question (interrupting). You are sure about leaving the property in their hands for sale, are you?

A. Yes; I was going to say, presuming whether it was said or not, that they would not sell without consulting us.

98 X Q. Did you leave them power of attorney to transfer the property?

A. No; no written power. The deeds were taken in the name of Latta to avoid powers of attorney, and I will state furthermore, in that connection, that at the time I went to Europe there were two other pieces of property which Sunderland and I ow-ed and which had been bought in 1871 by Stewart and myself, which, upon suggestion of Latta, was also put in his name for the sole reason, as he represented and as influenced me, that when sales should be made conveyances might be made conveniently without getting the signature of myself and of my wife, who was also in Europe.

99 X Q. Well, your idea was when you went to Europe that you were leaving the property in their hands with the liberty of
387 dickering for a sale, and if a suitable offer was made they were to advise you of it?

A. Yes.

100 X Q. Now, don't you remember, as a matter of fact, that when you went to Europe you told them that the property was not for sale?

A. I do not remember any such thing. The property was bought for sale.

101 X Q. Did you not tell them to hold on for a time?

A. Possibly we did.

102 X Q. And while you were in Europe and holding on the panic came and you could not let go?

A. I do not know that we wanted to let go.

103 X Q. You could not have sold it anyway, could you?

A. Not for any profit that would have been satisfactory to us. I am quite sure of that, or we would have done it.

104 X Q. You say that in 1873 you repudiated the idea of compensation to the firm. What do you mean by that?

A. Just what I say; that I totally rejected the idea that they should charge us anything for what they were doing in that matter. I did not consider that they were doing more than brokers
388 usually did or would do when they had property left in their hands for sale. I considered the service very slight, and if

anything had been said about amount of compensation I should not have supposed that, independent of the question of this property being in their hands as brokers, *that* for doing what they did they could have charged any considerable sum.

105 X Q. Who at that time spoke of compensation?

A. I spoke of it, and it was the first I ever heard said on that subject.

106 X Q. To whom?

A. Either to Kilbourn and Latta or both.

107 X Q. Do you remember where they were?

A. In the back room of their office.

108 X Q. Did they both insist on compensation?

A. No; my recollection is that Mr. Kilbourn did not. I do not know exactly what he did say, but I think he did not insist upon it.

109 X Q. He did not say he would work for nothing, did he?

A. He did not consider it working for nothing, and he thought it would be better to do that than for us to put the property in other hands.

110 X Q. How were they to derive any good out of holding
389 this property, which they could not sell?

A. They expected to be able to sell it, and it was considered by them as it was by us that some time or other the property would be sold. It might be within a longer or shorter time.

111 X Q. Don't you know as a matter of fact in the history of this city since 1871 that every owner of property had to be on the alert in order to save himself from being very seriously damaged either in the way of excessive assessment, excessive taxation, carrying away of property, excessive price for grading and the cutting down of streets and the raising of them up? Don't you know that it required a man's attention pretty close to keep himself from being pretty seriously hurt during that period?

A. I did not think that it did; I did not think so at the time, and I do not think so now. I do not think there was anything, or at least very little, that the owner of property could do in reference to any of those matters.

112 X Q. Don't you know as a matter of fact that large claims were made out against the District government for damages
390 to your property and were prepared and prosecuted by the firm in your behalf? When I say in your behalf I mean in behalf of you and your associates.

A. I know that Mr. Olmstead told me that we could make out claims; just what he did about it, if he did anything, I do not know. I remember his speaking to me about it, and whether we got anything or not I do not know, but we have no credit for anything.

113 X Q. What do you know personally about withholding those deeds from record?

A. At the time I never thought anything of it. I supposed, of course, if we wanted to see the deeds we could see them, and when I heard they had been put upon record at a later day it never struck me as being improper in any way, and it would not at all now, except for what I have since learned of the way in which this property

was held by this firm, and I think now that they would a little rather not have had us see those deeds, and they so talked to us that we did not care to see them.

114 X Q. Did not you know the fact that the other deeds of
391 property they were buying were withheld in the same way?

A. I do not think I knew it. I might have known it.

115 X Q. Was not the matter discussed in your presence?

A. I do not know that it was. I have no recollection of any such thing being discussed in my hearing, but I will say that if it had I should likely have assented to its propriety.

116 X Q. Did you ever ask any member of the firm for the privilege of looking at any account or any book showing the purchases made by you gentlemen?

A. I did not and, so far as I know, none of my associates did. The truth is we trusted that firm very implicitly in this matter. We allowed them to do this business. We supposed them to be at work for us and we made no inquiries, perhaps not as many as prudent men ought to, but at the time we had no suspicion that anything was or could be wrong about it, and consequently we did not ask to see any papers and we left our money in large amounts in their hands. Sometimes there would be fifteen or twenty
392 thousand dollars or more of money belonging to us in their hands unused, and when I went off to Europe I left about thirty thousand dollars which the firm had the privilege of checking upon. I told them what I wanted done with it; that it was partially to make payments on my house. I only say this to show the sort of relations which existed between us and that firm; and I say further that if I had thought it necessary to look into their deeds or papers they would never have been employed by me any longer.

117 X Q. They rendered an account for all this money, did they not?

A. They rendered an account which I presume showes correctly how this money was spent.

118 X Q. They rendered other accounts, did they not?

A. They rendered an account in 1872, which has been introduced here, in reference to the purchase of the property. They rendered an account in November, 1873, which showed the receipts and disbursements from the month of May, 1873, up to the month of November, 1873. I think it was about forty-one thousand dollars ($41,000.00). Besides that they never, to my knowledge, rendered any account until 1878.

393 119 X Q. Do you know anything about efforts being made by the firm to keep the real estate market from breaking down?

A. I believe they did work like all other brokers to try to keep it up. I do not know of any special services they rendered in that respect, except that they tried to keep real estate prominently before the public, and, so far as I could see, they did more in that line than any other brokers.

120 X Q. Was that at the time of the panic?

A. All the time that the firm lasted, so far as I know.

121 X Q. Do you know when the firm was dissolved?

A. I do not. I received a notice from Mr. Latta in 1877, in the form of a letter, in January, saying that the firm had dissolved.

122 X Q. How long after you received that notice from Mr. Latta was it that you received the accounts from Olmstead in relation to the business done by Kilbourn and Olmstead for your association?

A. My impression is that Mr. Olmstead sent me an account in the fall of 1877. I do not know of any before that, and I know from that account and the letter he wrote I was a little confused as to how the business was being managed by the firm—as to how they had divided it up.

394 123 X Q. In making these purchases along in June, 1872, notes were given for the unpaid part of the purchase-money, were they not?

A. Some of it.

124 X Q. Who signed those notes?

A. Mr. Latta, either as trustee or, as he did in one instance, as an individual. The arrangement was that he should sign them all as trustee and it was his suggestion that he should do it. He suggested that as he took the title to himself he should make these notes, and he did it; but in one instance he signed as an individual; that was in reference to square 195, I think, to the extent, I should say, in all of perhaps one hundred and twenty-five or one hundred and fifty thousand dollars.

125 X Q. You were duly notified by the firm when these notes were about to mature?

A. Yes, sir.

126 X Q. When did you first make default in the necessary money to meet these notes?

A. I do not think we ever made any substantial default. Up to July, 1876, all the money was sent which they said they needed. That is my impression about it. Until July, 1876, I think

395 they had all the money they needed directly from Sunderland and myself, and after that. We had said to them before that we did not want to put any more money into it than we could help. We thought it would be best for us to borrow on the property enough to carry it on, and had requested them to do it, and shortly after, along in the fall of 1876, they made a loan of fifty thousand dollars ($50,000) from Mr. Jeffries.

127 X Q. Did you pay them anything for that?

A. We paid somebody five hundred dollars ($500) commission for that loan, and I suppose it was to the person who did the business.

128 X Q. Do you suppose it was paid to Kilbourn & Latta?

A. I don't know who did the business. I know we paid somebody.

129 X Q. What became of the notes?

A. There was no difficulty about any of the notes.

130 X Q. Why?

A. Because the property was at all times ample, doubly ample,

trebly ample, and it was so considered by the holders of the notes.

We had paid a great deal of money upon this property besides
396 the cash payments during the years '73 & '74, so that all there was due was small in amount compared with that which had been paid.

131 X Q. Don't you know, as a matter of fact, that many holders of these notes pursued Latta & Kilbourn & Latta for payment?

A. I don't believe they ever did, except to ask for payment. I have no knowledge of any annoyance about it except at some time when a note was not paid the parties asked for their money, but Kilbourn & Latta did not pay any money nor were considered the responsible parties. The firm were not considered to be owners of any property, and Mr. Sunderland was a wealthy man, at least as late as 1876—was worth at least a million of dollars ($1,000,000). There could not have been any difficulty to the firm, and instead of its being, as they say in their answer, an injury to their credit, I think it was a great advantage to their credit.

132 X Q. Is it an advantage to the credit of a firm to have a note dishonored?

A. The notes were not theirs.

133 — Q. They were signed by Mr. Latta, were they not?

397 A. They were signed by him as trustee; therefore it was no discredit to him to have them dishonored.

134 X Q. How do you know, as a matter of fact, they were not pursued. You were not here?

A. I never heard anything about it. All they ever said was that so and so wanted his money, and they would telegraph us for money.

135 X Q. You say you paid no money out?

A. Paid no money out in one way, but they had money of ours in their hands.

136 X Q. Did they ever raise money to ease along these notes?

A. They never, to my knowledge, raised a cent; I do not think they had any money to raise.

137 X Q. Do not the accounts show that the five hundred dollars commission was paid to Jeffries?

A. Their account shows that the commission was paid to Jeffries.

138 X Q. Is not that account correct?

A. It is strange that Jeffries should charge commission when he made the loan. I did not, however, care anything about it.

139 X Q. Did not Jeffries loan the money as trustee?

398 A. I do not know; I have no doubt Jeffries got the five hundred dollars if he did the business; if he did not, the firm did.

140 X Q. But the firm did not get anything for making the loan?

A. We were charged the full price anybody ever is for making a a loan, and paid it.

Adjourned to meet at Mr. Olmstead's office, No. 1426 New York avenue, at 2.30 p. m. on Tuesday, October 25th, 1881.

J. J. JOHNSON,
Examiner in Chancery.

399 Mr. C. J. HILLYER recalled.

Redirect examination by Mr. J. H. RALSTON:

1 Q. What do you know with regard to the employment of Mr. Cox to bring suit against Kilbourn and Latta, and the reasons for the suit not being brought?

A. I have stated all that I know in regard to the employment of Mr. Cox. When Mr. Sunderland returned to the Pacific coast where I was he told me that the suit would be commenced, and I supposed that it had been commenced, until some time in 1879. When I came back here I found that Mr. Cox had gone on the supreme bench. The papers had been left with Messrs Hanna and Johnson. I determined not to make any further employment of attorneys until I went back and saw Mr. Sunderland, who was at that time expecting to come on to Washington always within a few weeks, but something occurred to detain him. In 1880 I came on myself
400 again and then got the papers from Hanna and Johnson and took them to Matt. Carpenter and employed him to commence the suits against Mr. Latta out in Indiana, whom I then considered the responsible party, and those suits were commenced about that time. The suits in Indiana were commenced against the firm, but with no expectation of getting service upon anybody except Mr. Latta. After directing those suits to be commenced I returned to the Pacific coast and remained there until about the first of May this year.

By Mr. SUNDERLAND:

2 Q. Do you remember, in my room at the Arlington, in the summer of 1878 shortly before you left for the Pacific coast, in conversation between us on one side and Kilbourn and Olmstead on the other, as to the items then in dispute between us? If you do, state what that conversation was and what was said.

A. Yes; I remember the conversation substantially as stated by Mr. Sunderland in his question.

3 Q. If you can remember the conversation and what was said by any one party, either one of the defendants or both, I would
401 like to have you state it. First, how did the conversation come up?

A. I was about going away to the Pacific coast and we had been looking over our accounts for two or three weeks in your room at the Arlington. In the afternoon of the day I was going, toward evening, Kilbourn and Olmstead came into the room. I do not remember the exact words which introduced this subject, but I know that it was introduced and that we stated to them that we considered the charge to be totally unwarranted, and I asked them if they did not remember a conversation with me in 1875 in which it was expressly agreed that they should make no charge for what they were doing except by commissions upon loans or sales. Mr. Olmstead, as I recollect, stated that he was not there and knew nothing about it.

4 Q. What did Mr. Kilbourn say?

A. Mr. Kilbourn said that he was there part of the time, but that most of that talk was had with Mr. Latta and he did not know that any agreement was come to. That was substantially it.

5 Q. Did they, the defendants, or either of them, either in that conversation or in any prior to that, claim that the charge
402 was just?

A. I think they defended it, but they defended it very weakly and in a qualified way.

The right to ask Mr. Hillyer questions as to his addenda is reserved by the counsel for the defendants.

Adjourned until Friday, October 28th, at 2.30 p. m., at Mr. Hillyer's office.

J. J. JOHNSON,
Examiner in Chancery.

Redirect examination of CURTIS J. HILLYER by Mr. J. H. RALSTON:

Q. In your cross-examination you were asked something about dishonored notes. Were there in fact any notes given by yourself or Mr. Latta dishonored during the existence of the firm of Kilbourn & Latta?

A. They were not dishonored in the proper sense of that term. There were only three notes overdue in 1876, which were tes-
403 tified to by Mr. Bull. He made a statement about the Riggs note of $10,000. The note to Miller, on which there was $11,000 overdue, was a note of mine on the balance of $20,000 note, which was at that time secured by a mortgage for the whole property, and also upon the residence which had been built upon it, amounting to the sum of $50,000 in value. I spoke myself to Mr. Miller about allowing the note to run on if he wished to do so. He told me he should want a part of the money, but was willing to allow the rest to run on, as the security was ample. In reference to the other note for $10,000, overdue in 1876, I will say that it was secured on the whole square 93, which had cost $40,000, but I was told by some member of the firm of Kilbourn and Latta—I do not know which—that they were willing to let it go over, so that I do not consider there was any of the paper properly dishonored. They went overdue by arrangement with the parties.

Q. You state that the Miller note was secured on the whole of the property; what do you mean by that?

A. I mean on the whole of that square, including the res-
404 idence put up there at a cost of $50,000.

Q. In your cross-examination you also said that Kilbourn and Latta could not sell without consultation with you; do you mean they had no authority to sell?

Obj.—This question was objected to by Mr. Totten as being improper under the circumstances.

A. I do not mean to say and do not wish to say that they did not

have legal authority to sell, because they did at all times have that authority in such a way that if in our absence and without consulting us they had made a sale of any of this property the purchaser would have acquired a good title, but to have made such a sale without previously consulting us would have been a breach of our understanding as between them and us.

C. J. HILLYER.

Subscribed to before me this 19th of Dec., 1881.

J. J. JOHNSON, *Examiner.*

The EXAMINER: Does this close the testimony for the complainants?

405 Mr. HILLYER: I make the following proposition, namely: I do not know whether we have any more testimony or not. We must wait for a deposition to come from the West, and I would suggest that the examiner adjourn to meet at two days' notice.

Mr. TOTTEN: I agree to that.

The adjournment was then taken with the understanding above noted.

J. J. JOHNSON, *Examiner.*

In the Supreme Court of the State of Indiana.

CURTIS J. HILLYER and THOMAS SUNDERLAND
vs.
KILBOURN and OLMSTEAD.

Testimony taken on behalf of complainants before John J. Johnson, examiner in chancery.

THOMAS SUNDERLAND sworn and examined.

By Mr. HILLYER:

1 Q. What is your full name?

A. Thomas Sunderland.

2 Q. Are you one of the complainants in this action?

A. I am.

3 Q. Where were you in the months of May and June, 1872?

A. In Washington city.

406 4 Q. At what time and for how long previous to those months had you been in the city of Washington?

A. I think I arrived here in the month of December, 1871, and remained here continuously until the time mentioned.

5 Q. Did you purchase property here in connection with the complainant-, Mr. Hillyer and William M. Stewart, during those months?

A. I did.

6 Q. What property did you purchase in connection with them?
A. Square No. 156.
7 Q. Have you an account there which shows that?
A. I have (producing paper).
8 Q. What is that paper?
A. It is an account rendered by the firm of Kilbourn and Latta in the month of June, 1872.

Mr. HILLYER: I ask to have it attached to the deposition, to be offered in evidence, and mark it "Exhibit A."

9 Q. Does this account which you have handed to the examiner show the parcels of property purchased?

Objected to by counsel for the defendants because the ac-
407 count speaks for itself, and for the further reason that it appears to be an account signed by James M. Latta and not by Kilbourn and Latta and Olmstead.

A. It contains all the property that we purchased jointly.
10 Q. What were the cash payments made on that property?
A. A little over a hundred thousand dollars.
11 Q. Have you an account showing that?
A. Yes. There was paid in by Stewart, Hillyer, and myself during the months of May and June, 1872, one hundred and seven thousand six hundred dollars and sixty-six cts. ($107,600.66). On the 27th day of June, 1872, I took on my individual account certain lots which have been charged to us jointly, reducing the cash payment made by Stewart, Hillyer, and myself to one hundred thousand eight hundred and fifty-five dollars, $100,855.00.
12 Q. Have you an account rendered by the firm of Kilbourn and Latta showing the cash payments made on account of the purchase of that property?
A. I have; here it is (producing paper).

Mr. HILLYER: I desire to offer in evidence this paper in
408 writing, and ask that the same be filed and marked "Exhibit B."

13 Q. At what time was it rendered?

Mr. TOTTEN: I wish to note the same objection. It seems to have been signed by James M. Latta.

A. I do not remember the time at which the last account, marked "Exhibit B," was rendered, but the first account, marked "Exhibit A," was rendered on or about its date, June 27th, A. D. 1872.
14 Q. Did you make these purchases directly or through the agency of a firm of brokers?
A. They were all made through a firm of brokers.
15 Q. What was the name of that firm?
A. Kilbourn and Latta.
16 Q. Under what arrangement or agreement was the firm of Kilbourn and Latta employed in respect to making these purchases?

Mr. TOTTEN (to Mr. Hillyer): May I ask if that arrangement was in writing?

Mr. HILLYER: It was not, so far as I know; but the witness will state in his answer, I presume.

Mr. TOTTEN: I object to verbal testimony as to a contract of that kind.

409 A. We went to them as real estate brokers and employed them to purchase for us such real estate as we might point out to them or they themselves might designate, if the same could be purchased at a price such as should be recommended by them and if such price when reported to us should meet our approval.

17 Q. Were these purchases made under that arrangement?

A. They were.

18 Q. Did you, or to your knowledge did either of your associates, have any communication with any of the owners of the property from whom you bought?

A. I did not, and know of neither one of my associates ever having any communication with the owners or sellers of the property.

19 Q. What was the reason for this?

Mr. TOTTEN: I object to that question. We want the facts about the matter and not the reasons of the witness or of anybody else.

A. There were two reasons. First, so far as I know, it is not the custom when a purchaser employs a broker to buy real estate for him to communicate with the owner or seller; and, second, we were specially warned by the firm not to have any communica-

410 tion with the owners or sellers of the property.

20 Q. What reason was given by them for making this caution?

A. They gave us a reason that if we attempted to make any negotiation with the owners of the property that they would put up the price on us, and when we bought we would have to pay more for the property.

21 Q. It seemed reasonable to you, did it?

Objected to by Col. Totten, counsel for the defendants, on the ground that it is immaterial.

A. Yes; I was satisfied with the reason.

22 Q. Did you have any other agents for the purchase of any portion of this property except the firm of Kilbourn and Latta?

A. We had no other agent or agents in the purchase of any of the property except a portion of square No. 195.

23 Q. What were the facts in respect to that?

A. I was informed by either Mr. Stewart or Mr. Hillyer that those lots in that square could be purchased on better terms through an outside broker than through the firm of Kilbourn and Latta.

24 Q. Who was the broker?

A. I learned afterwards that it was Col. Berret.

411 25 Q. Did the firm of Kilbourn and Latta know, at the

time, of the employment of Mr. Berret, in reference to this property?

A. I do not know that they knew it before the purchase was made. They knew it afterwards, and the money for the cash payment went through their hands, and they attended to the searching of the title and the execution of the papers.

26 Q. With that exception, I understand you that all the property was purchased through the firm of Kilbourn and Latta in the manner you have mentioned?

A. It was.

27 Q. Did you ever know of the firm of Kilbourn and Latta or either member of it being the sellers of any of this property?

A. I never knew or learned anything of it until during the present year.

28 Q. Did you know of their being in any manner interested in the sale of the property otherwise than as brokers?

A. I never knew them to be interested in any way in the property or in the sale of it, except as brokers for us.

29 Q. Did they or either of them ever give you any information or any intimation that they were interested as sellers or
412 with the sellers in the property?

A. Never.

30 Q. What was the arrangement about compensation with the firm of Kilbourn and Latta for making these purchases?

A. The firm told us that very often they could get commissions from the seller of the property; that when they could get commissions from the seller they would charge us no commission; where they could not get a commission from the seller we would pay commissions.

31 Q. Did they represent to you or did you understand from this that the firm were or proposed to be the agents in any case of the sellers of the property?

Mr. TOTTEN: I object to that question because it is immaterial what Mr. Sunderland's understanding was.

A. They never so represented or intimated to me.

32 Q. Was it stated in what way they would be able to charge commissions for the sellers? If so, explain what was said upon that point.

A. My recollection is that they stated that very often when they got the seller down to what he said was the lowest price
413 that he would take for a particular piece of property they could then get commissions out of that price.

33 Q. And that would amount to so much reduction to yourself and your associates?

A. Yes, sir.

34 Q. What were the inducements which led to the formation of this enterprise by yourself and Hillyer and Stewart to purchase this property?

A. One was the active prosecution at the time of public improvements, including streets, and we had come to the conclusion that in

the northwestern part of the city, where we purchased all the property which we did purchase, property was comparatively lower than in other parts of the city, and we thought it must advance there within a short time.

35 Q. What knowledge did you have of the values of real estate in the city at the time you commenced to make these purchases?

A. Personally I had very little knowledge of the prices of property anywhere. I took the opinion of others, and particularly the opinion of the firm of Kilbourn and Latta.

414 36 Q. Did you at any time before or during the time that these purchases were being made investigate or attempt to investigate the price at which any particular piece of property could be obtained otherwise than from the statement of your brokers, Kilbourn and Latta?

A. I did not, unless it may have been the price of the lots purchased in square 195.

37 Q. What was the character of the relations between you and the firm during the period in which these purchases were being made?

A. Those of principal and agent.

Mr. TOTTEN: I object to that answer. It is a conclusion of law and not of fact.

38 Q. What was the extent of your personal intercourse with them during this period?

A. I saw them almost every day.

39 Q. Did you during or shortly after the period that you have mentioned also purchase unimproved real estate in the same quarter of the city on your individual account?

Objected to by Col. Totten, counsel for defendants.

A. I did.

40 Q. Have you an account showing the purchases so made?

A. I have; here it is (producing paper).

415 41 Q. What is this account which you produce?

A. It is an account rendered by Kilbourn and Latta to me of purchases of real estate made by them for me; also of the receipts of money from me and disbursements by them on account of the purchase of this real estate.

Counsel for the complainant offers in evidence the paper writing produced by the witness and asks that the same be filed and marked "Exhibit C."

The introduction of which is objected to by counsel for the defense because it is not involved in this controversy.

42 Q. Was there any new or different agreement made between yourself and the firm of Kilbourn and Latta, in reference to the purchase of this property, than that which had existed between yourself and Hillyer and Stewart in relation to the purchase of the joint property?

Which question is objected to by Col. Totten because not material or involved in this controversy.

A. The property was purchased under the same arrang-ment.

43 Q. In what manner were the funds provided and furnished for the purchase of this property?

416 A. My contribution to the purchase of the joint property was made by checks or drafts on New York.

44 Q. I meant less the particular method in which the amounts were paid than the times, manner, and circumstances under which the money was furnished for the purchase.

A. We were notified by the firm of Kilbourn & Latta when any money was required to be paid on the purchase of the property and when so notified we furnished them the amount which they required.

45 Q. Were those amounts furnished only for the payments of purchases actually mad-, or also in view of proposed purchases?

Mr. Totten: I object to that question unless there is some written manifestation of the minds of the firm about that.

A. We always furnished the money in advance of cash payments to be made upon purchases.

46 Q. Did you furnish money in the exact amounts of purchase price? I want to get at the general manner and way in which money was furnished to the firm.

A. I do not think we furnished the exact amount required for the cash payment on each purchase, but when notified by the firm that so much money would be necessary to complete one or more

417 purchase- the money was furnished them in advance; it was furnished in round sums and not in the precise amount or amounts required to close any one or more purchases.

47 Q. State what you know in reference to the negotiation and purchase of square 115.

A. I know nothing of the negotiation, as that was carried on by the firm of Kilbourn and Latta. Mr. Stewart, Mr. Hillyer, and myself had looked several times at that square and thought it a desirable square to be purchased by us if it could be had at a fair price, and so notified the firm of Kilbourn and Latta and requested them to ascertain what it could be purchased for or the lowest sum for which it could be purchased.

48 Q. What did they report to you about it?

A. They reported sixty-five thousand dollars ($65,000.00) as being the lowest sum for which it could be purchased.

49 Q. Did you and your associates pay to them that sum of sixty-five thousand dollars ($65,000.00) on account of the purchase?

A. We paid to them at the time of the purchase or previous to the purchase the sum which they said was necessary to make the cash payments.

418 50 Q. And how about the deferred payments?

A. It was understood that in all cases of deferred payments Mr. Latta — receive the title as trustee and should execute notes on a deed of trust for the deferred payments.

51 Q. Do you say that it was understood that Mr. Latta should execute notes absolutely?

A. No; I would amend that. It was understood that he should as trustee execute notes and deeds of trust in all cases to secure deferred payments.

52 Q. Did the amount of deferred payments and the amount of money paid by you and your associates as cash payments to the firm of Kilbourn and Latta amount to the sum of sixty-five thousand dollars ($65,000.00) on that square?

A. That is the sum it amounted to.

53 Q. Did you ever until within the last year know or suspect that anything less than sixty-five thousand dollars ($65,000.00) had been paid to the owners of the property by the firm of Kilbourn and Latta?

Objected to by Col. Totten as immaterial.

A. I never did.

54 Q. Was there ever any act done or anything said by the firm of Kilbourn and Latta or by either member of it which should
419 have led to a suspicion or to an inquiry respecting this fact?

Objected to by Col. Totten as immaterial and for the further reason that it calls for a conclusion, not a fact.

A. There never was, to my knowledge.

55 Q. Were you informed at or before the purchase by the firm or either member of it that they or either of them had any interest in the sale of this property?

A. Never, except as to their commissions.

56 Q. When did you first learn to the contrary?

Objected to by Col. Totten as immaterial.

A. I think it was, in February last.

57 Q. How did you learn it?

A. I learned it first from the records, finding the record of deeds passing between Mr. Latta and Mr. Olmstead; sometimes from one to the other.

58 Q. I am speaking now of square 115 and confining my questions to that.

A. As to square 115, seeing the consideration mentioned in the deed, I instituted inquiries as to the amount of money which the firm had paid for the property and ascertained that they had only paid forty thousand dollars ($40,000.00).

420 59 Q. Previous to the last year had you ever seen the deed from the seller of this property to Latta as trustee?

Objected to by Col. Totten as immaterial.

A. I never saw the original deed. I first saw the record in February last.

60 Q. What do you know concerning the negotiations for and the purchase of lot 17, in square 158?

A. I know nothing of it personally, except that we authorized its

purchase by the firm of Kilbourn and Latta, and it was purchased by them, or at least it was so reported by them to us.

61 Q. What representations, if any, did they make concerning the price paid for the property?

A. In answer to that question I would say that in all cases where they made a purchase they represented to us that the sum reported to us was the lowest price at and for which the property could be purchased.

Mr. TOTTEN: I object to that because it is not an answer to the question, and I ask that the question be read to the witness.

The question was then read over to the witness.

421 62 Q. Do you know the price paid by yourself and your associates for that lot No. 17?

A. Eight thousand three hundred and sixteen dollars ($8,316.00).

63 Q. Did the firm or either member of the firm at any time prior to the answer in this case represent or suggest that they or either of them were either the owners or holders of this property or had any interest in its sale otherwise than as brokers?

A. They did not.

64 Q. Was there any such representation or suggestion made in reference to either of the other lots purchased in square No. 158?

A. There was not.

65 Q. What do you know of the negotiation for & purchase of square No. 155?

A. I know nothing personally. I know it was purchased for us by Kilbourn and Latta.

66 Q. Did they represent to you and your associates the price at which the property could be bought?

A. They did.

67 Q. What was the price?

A. Seventy-two thousand nine hundred and seventy dollars and thirty cents ($72,970.30).

68 Q. Was that price paid by yourself, Hillyer, and Stewart?

422 A. I cannot say that it was. We made the cash payments represented necessary to be made and paid a part of the principal and interest, and the balance has not been paid yet.

69 Q. Who owns the balance?

A. I do.

70 Q. Well, what I want to know is whether or not the price charged by the firm of Kilbourn and Latta to the purchasers—yourself and your associates—was the amount you have mentioned of seventy-two thousand nine hundred and seventy dollars and thirty cents ($72,970.30).

A. Yes, sir.

71 Q. What was the amount of cash payment which they represented was necessary to be made on the purchase?

A. A little over eighteen thousand dollars.

72 Q. Was that paid at the time by you and your associates?

A. Our money was in their hands at the time of the purchase,

and they appropriated that amount from our funds already in their hands.

73 Q. Have they since retained it?

A. I do not know what they have done with the money. They have not returned it to us.

423 74 Q. In whose name was the title to the several parcels of property which you have mentioned taken at the time of the purchase?

A. In the name of James M. Latta, trustee.

75 Q. At whose suggestion and for what reason was this done?

A. It was at the suggestion of Kilbourn and Latta, and the reason given by them for the suggestion was, first, that they could make better negotiations for the purchase of other property if the principals in the purchase were not known; and, second, that, as Mr. Hillyer and I were absent from the city a great deal, it would be more convenient upon making sales of the property which was then contemplated to have the title in Mr. Latta, who was here and could convey without transmitting deeds to us for execution.

76 Q. Did you and your associates consent to the title being taken in this way?

A. We did.

77 Q. At that time was there any statement made in relation to a declaration of trust which should be executed by Mr. Latta; if so, what was it?

A. If there was anything said about it I do not remember it.

424 78 Q. After the purchase of this property did the firm of Kilbourn and Latta render any services to the owners in respect to the property? And, if so, state the character of the services.

A. They disbursed money furnished by us for payment of taxes and making payments on principal and interest of deferred payments on the property. I know of no other services rendered by them, except the borrowing of fifty thousand dollars ($50,000.00) from or through General Jeffries.

79 Q. Were you and Mr. Hillyer charged commissions on that loan?

A. We were.

80 Q. How much?

A. There was a charge for commissions of five hundred dollars, and a sum subsequently charged for commissions and discount on bonds received by them from General Jeffries in lieu of money.

81 Q. Under what arrangement or upon what considerations were these services which you have mentioned rendered by the firm of Kilbourn and Latta?

A. I know of no absolute agreement, but it was always my understanding that the disbursement of money furnished by us

425 in the payment of taxes and otherwise should be made without charge, the brokers relying upon their commissions from the sale of the property to reward them for their services.

82 Q. After the purchase of the property was it left in the hands of this firm of brokers for sale?

A. It was.

83 Q. How long did it remain in their hands for sale?

A. It was left in the hands of the firm for sale until the firm was dissolved.

84 Q. What was done with it then?

A. And thereafter until the summer of 1878 it was in the hands of either Latta or Kilbourn and O.

85 Q. In the account which you have presented marked "Exhibit D" there is an item entered in December, 1876, for care and management of property amounting to some sixteen thousand dollars, $16,000.00. When did you first know that any charge for care and management had been made by the firm of Kilbourn and Latta against yourself and Hillyer?

A. In the latter part of June or the early part of July, 1878.

86 Q. How did you ascertain it?

A. From an inspection of the account.

87 Q. From an inspection of what account?

426 A. The account rendered by Kilbourn and Latta up to the 30th of December, 1876, and delivered to us the last of June or the first of July, 1878.

88 Q. How came that account to be rendered to yourself and Hillyer?

A. It was rendered to us at our request at that time.

89 Q. When had you been in Washington previous to June, 1878?

A. In May, 1873.

90 Q. Previous to the rendition of this account, which was rendered in July, 1878, had there ever been any account received by you from the firm in which any mention had been made of a charge for care and management?

A. Never.

91 Q. Had you, previous to July, 1878, from anything which had ever been said or written by the firm to you or otherwise, any knowledge or reasons to suppose that it was the intention of the firm to make any charge for the care and management of this property outside of commissions upon loans and sales of the property?

Objected to by Col. Totten as immaterial.

427 A. I had no knowledge or reason to suspect that any such charge had been or would be made until I examined the account delivered to us in the summer of 1878.

92 Q. When you received this account and had seen this charge what did you do about it?

A. Mr. Hillyer and myself went to the office of Kilbourn and Olmstead and protested against the charge as being unjust, and on the same or the next day went to Mr. Latta's house and made the same or a similar protest to him.

93 Q. You state that the protest was because the charge was alleged to be unjust. Was it alleged to be unjust in whole or in part?

A. In whole.

94 Q. In the month of July, 1878, and immediately previous to

Mr. Hillyer's departure for the Pacific coast, was there any conversation had between you and Mr. Hillyer and Kilbourn and Mr. Olmstead in respect to this charge? If so, state the circumstances and, as far as you recollect, what was said.

A. Shortly before the departure of Mr. Hillyer to the Pacific coast the defendants in this case called at my room at the Arlington Hotel, and during the time they were there the subject of the injustice of this charge, together with others, was discussed.

428 Mr. Hillyer at the time claimed to have made an agreement with the firm of Kilbourn and Latta by and under which no charge for such services as were rendered by them should be made, and cited the place and about the time when he claimed such an agreement was made. Mr. Olmstead said that he passed in and out of the room during the time that some conversation was being held, but he did not know what the conversation was about. Mr. Kilbourn said that he was there a part of the time, and my impression is, though I am not positive, that he said at that time that he told Mr. Latta and Mr. Hillyer to make any arrangement about it which they might choose to make, and that he would be content with such arrangement.

95 Q. Had you ever heard anything of such an alleged agreement before?

A. Yes, sir.

96 Q. When and where?

A. I heard it from Mr. Hillyer in San Francisco.

Mr. TOTTEN: That is objected to.

97 Q. About what date?

A. I should think in the year 1875.

98 Q. What was the relative value of the services rendered

429 by this firm in keeping the accounts and disbursing this money to the right and authority of holding for sale as brokers of the amount of property that was left with them?

A. I should think that the prospective commissions on sales of the amount of property belonging to us and in their hands would well repay any broker for such services as were rendered by the firm of Kilbourn and Latta.

Counsel for the complainant- here offers in evidence a paper writing and asks that the same be marked "Exhibit E" and filed, the introduction of which is objected to by Col. Totten.

Counsel for complainant- also offers in evidence a paper writing and asks that the same be marked "Exhibit F" and filed, to the introduction of which Col. Totten objected.

Also counsel for complainant- offers in evidence another paper writing and asks that the same be filed and marked "Exhibit G," to the introduction of which Col. Totten objects.

99 Q. The accounts offered show, between the time of the purchase of this property and the first of January, 1877, the re-

430 ceipt and disbursement of a large amount of money, some of it upon the joint account of the complainants, the other on

the account of yourself individually. State how this money was sent and by whom the application and disbursement of it in payment was made as between yourself individually and yourself and the plaintiffs jointly.

A. The money that I sent was sent by draft on New York or by telegraph. Sometimes the firm of Kilbourn and Latta placed the money to my individual credit and sometimes to the credit of the complainants. The assignment of the credit to one or the other account was determined by them, as also the disbursements made by them.

Adjourned.

J. J. JOHNSON,
Examiner in Chancery.

Met, pursuant to adjournment, at the time and place named in said adjournment.

Present: Mr. C. J. Hillyer and Mr. J. H. Ralston, for the plaintiffs, and Mr. Enoch Totten, for defendants.

Cross-examination of Mr. THOMAS SUNDERLAND by Mr. TOTTEN:

1 X Q. What is your business?

431 A. At present I am an operator in real estate.

2 X Q. Are you a lawyer by profession?

A. I am a lawyer by profession.

3 X Q. You have practiced law in your time?

A. Yes.

4 X Q. Where?

A. In the States of Missouri, California, and Nevada.

5 X Q. When did you first come to Washington with a view of remaining here or of operating here in real estate? I want you to fix the date as nearly as you can.

A. I never came here with a view of remaining. I came here in the fall of 1871.

6 X Q. Do you remember the month?

A. I think it was December.

7 X Q. Prior to that time had you been operating in real estate in any other place?

A. I had.

8 X Q. Where?

A. In California.

9 X Q. When did you make the combination with Mr. Hillyer and Mr. Stewart to buy real estate in Washington? I want the date fixed as nearly as possible.

A. I think it was in May, 1872.

10 X Q. Where was that arrangement entered into—in Washington or elsewhere?

A. It was in Washington.

432 11 X Q. The Board of Public Works was then engaged in improving the streets of the city?

A. Yes.

12 X Q. What was the nature of the arrangement between you three gentlemen?

A. We agreed to buy property in the northwestern part of the city.

13 X Q. On what conditions amongst yourselves? Did you furnish equal sums of money and share and share alike in the profits and losses?

A. In our joint purchases I was to be one-half interested and Mr. Stewart and Mr. Hillyer one-half each.

14 X Q. Did you furnish half the money? Were you to furnish half?

A. I was to, and I did.

15 X Q. And they furnished the other half?

A. Yes.

16 X Q. And the profits were to be divided in the same proportion, and the losses?

A. There was no agreement about that.

17 X Q. Did you not expect to have any losses?

A. No.

18 X Q. How came you to select the northwestern part of the city rather than some other portion of it?

A. The northwestern part of the city was then comparatively unoccupied, and we were advised by the firm of Kilbourn and
433 Latta that that was the best portion of the city to invest money in.

19 X Q. Did you have the same opinion or a different opinion?

A. I entertained the same opinion.

20 X Q. Where were Kilbourn and Latta engaged in doing business at that time when you made your first arrangement with them, on the corner of 15th and G streets, opposite the Riggs House, was it not?

A. Yes.

21 X Q. Was the real estate market pretty lively when you first spoke to them about the business?

A. I think it was.

22 X Q. There was a great deal of buying and selling, was there not, in various parts of the city?

A. So far as I knew from the firm, real estate was very active at that time.

23 X Q. It was much easier to buy than to sell, was it not, where the property was desirable?

A. I do not know.

24 X Q. With whom did your party make the bargain—which member of the firm of Kilbourn and Latta?

A. With Kilbourn and Latta.

25 X Q. Both?

A. Yes, sir.

26 X Q. You did not speak to Mr. Olmstead about it?

434 A. I think not.

27 X Q. Did you represent the combination on your side?

A. I did not.

28 X Q. Who did?

A. No one, so far as I remember.

29 X Q. Well, who did the talking with Kilbourn and Latta?

A. I talked with them a great deal.

30 X Q. I am speaking now of the time when you made your bargain with them—when you employed them, as you say?

A. I talked with them myself.

31 X Q. Was Mr. Hillyer present?

A. I do not remember.

32 X Q. Was Mr. Stewart present?

A. I do not remember.

33 X Q. Are you sure that Kilbourn and Latta were both present?

A. I think so.

34 X Q. Where was it; in what part of the office were those gentlemen at the time?

A. I think in the front office.

35 X Q. In the front office?

A. I think so.

36 X Q. Do you remember what you stated to them about the business?

A. I do not.

435 37 X Q. Did you tell them that you had formed this arrangement with these other two gentlemen for the purpose of speculating in real estate in the northwestern part of the city?

A. I did.

38 X Q. Well, what did they say?

A. They recommended the purchase of property in that portion of the city.

39 X Q. In what way? What did they say about it?

A. They said that if we would purchase a large amount of property in that portion of the city that we could not fail to make a handsome profit on it.

40 X Q. Provided you held it long enough. Was that added?

A. It was not added.

41 X Q. But you expected to hold it until the market price advanced, did you not?

A. We expected to hold it until a profit was made out of the property before we sold it.

42 X Q. Was there anything said about any particular price of property at that time?

A. At what time do you mean?

43 X Q. When you made this bargain with these gentlemen.

A. During the time that we were negotiating for property through the firm of Kilbourn and Latta there were particular pieces of property designated—amongst others, square No. 115.

436 44 X Q. You are getting ahead of me. I want to get all the facts out about this agreement before we get down to particular pieces of property. Was there anything stated, when you first employed the firm of Kilbourn and Latta, as to which

pieces of property in the northwestern part of the city you were to speculate in?

A. I think not.

45 X Q. Well, what was the extent of the understanding between the firm and you at this first interview when you made known your desire and the desire of your two associates to speculate in real estate here?

A. We employed them, Kilbourn and Latta, to purchase for us real estate in the northwestern part of the city.

46 X Q. How did you employ them—in writing or verbally?

A. Verbally.

47 X Q. Did you do it or did your associates do it?

A. I think we all consented to the employment of this firm.

48 X Q. Somebody had an interview with Kilbourn and Latta—who was it?

A. I had, myself, interviews with them.

49 X Q. More than one?

A. Yes.

50 X Q. When did you have these interviews?

A. In the spring of 1872.

51 X Q. In May?

A. I think it was in May, 1872.

52 X Q. How many of those interviews did you have with
437 them?

A. I cannot remember how many.

53 X Q. Did you have one or two or three?

A. More than that.

54 X Q. How many interviews were required to conclude this employment that you have mentioned?

A. Possibly not more than one to conclude the employment.

55 X Q. That employment consisted in your telling Kilbourn and Latta that you intended, with those other two gentlemen, to engage in speculations in real estate in the northwestern part of the city, and that you would wait their services in the matter. Was that the extent of the employment?

A. I think so.

56 X Q. Nothing beyond that?

A. Nothing.

57 X Q. Then there was nothing said about compensation to them or the terms of their engagement in particular?

A. I do not remember that at that time there was anything else said.

58 X Q. You found those gentlemen engaged in the business of buying and selling real estate and you went to their office and told them you intended to engage in this business and would
438 probably require their services. That was about the way of it, was it not?

A. They were real estate brokers, recommended to me, and I and my associates employed them to buy real estate for us in our interest.

59 X Q. On what terms?

A. The terms were that if they could not get commissions from the sellers of property we would pay them commissions.

60 X Q. Well, what else?

A. Nothing else.

61 X Q. Was there anything stated about their serving you exclusively and you employing them exclusively?

A. I do not think there was anything said, but my understanding was that we employed them as our brokers and agents.

62 X Q. To do what?

A. To buy real estate for us in our interest.

63 X Q. Were you under any obligations to confide all your business to their care by virtue of that arrangement?

A. I do not think we were under any legal obligation to entrust them with our business.

64 X Q. Were you under no contract obligation at all to employ them if you did not want to—were you?

A. Under no contract obligation.

65 X Q. If you thought some other man could buy a piece
439 of property that you wanted to better advantage than they could you were at liberty to go to that other man, were you?

A. We did, in one instance, go to another man.

66 X Q. Well, you were under no obligations not to go to another man?

A. No.

67 X Q. Then there was no general bargain between you about it, that they were to serve you all the time or you to employ them all the time?

A. There was.

68 X Q. What was it?

A. That they were to be our brokers for the purchase of real estate in the northwestern part of the city.

69 X Q. Did you pay them anything by way of binding the bargain at that time?

A. We did not.

70 X Q. That was the understanding at the time of the first conversation between you and Kilbourn and Latta, was it?

A. I think it was at the first conversation I had with them.

71 X Q. You knew the fact that they were buying and selling real estate for everybody who employed them and for themselves, too, did you not, at this time?

A. I knew that they were brokers for the purchase and
440 sale of real estate, but I did not know that they were buying and selling real estate on their own account.

72 X Q. When did you first find out that they were buying and selling real estate on their own account?

A. Within the present year

73 X Q. You never knew it before?

A. I did not.

74 X Q. Was there anything said at this original contract between you and Kilbourn and Latta as to amount of compensation they should charge you?

A. Never.

75 X Q. Was there any stipulation as to the amount of money you should furnish to the concern?

A. We were to furnish the money necessary to make the cash payments.

76 X Q. Was that understanding had at the time of the first interview?

A. It was.

77 X Q. You went into the details of it at that time—the terms upon which they were to serve you?

A. There were no details discussed at that time?

78 X Q. Well, am I correct, then, in this understanding that you simply went to Kilbourn and Latta, after you gentlemen had made up your minds about this speculation, and told them what you intended to do, and that you should want the benefit *to* their
441 services as brokers. Is that right?

A. That is right.

79 X Q. Then there were no details about how things should be done at that time.

A. No; no details.

80 X Q. You knew when you went to them that Kilbourn and Latta or that firm was largely interested with other people in speculation, did you not? I mean speculation in real estate in Washington.

A. I had understood that they were connected with the Real Estate Association.

81 X Q. Well, you knew the fact also that they were buying and investing largely in land in the northwestern part of the city—that Real Estate Association of which Kilbourn and Latta and the members of that firm were parties?

A. I did not know that place where they were buying.

82 X Q. How soon after this first interview did you ascertain the location where they were investing their money?

A. Long after we ceased purchasing.

83 X Q. Can you tell how long after? Was it a year?

A. Yes.

84 X Q. That was in 1873, was it not?

A. In 1872.

442 85 X Q. Did you know when you went to Kilbourn and Latta that they were also engaged for other parties who were speculating in real estate and interested with them?

A. They told me so. I knew that they were buying real estate for other parties, but I did not know that they were personally interested in the purchases.

86 X Q. Now, Judge, you knew that they were interested in the Real Estate Association or Real Estate Pool, as it was called, did you not?

A. I did not. I knew that they were purchasing as brokers for the Real Estate Association, but at that time I did not know that they or any member of the firm had any interest in that association.

87 X Q. You say you did not find that out until after you stopped purchasing?

A. I did not.

88 X Q. Were you present at any conversation between Kilbourn and Latta and Olmstead or any one of them and Mr. Hillyer or Mr. Stewart or both of them touching the terms upon which these gentlemen were to operate for you; and, if so, where was it and when was it?

A. I think we were all present at the office of Kilbourn and Latta.

89 X Q. Well, state when and what about.

443 A. It was in May, 1872, and in reference to the purchase of real estate.

90 X Q. Was that the first interview between you gentlemen and the firm touching this business to which you have alluded?

A. It may have been talked about before, but I know that we all three went to their office and consulted about the purchase of this real estate.

91 X Q. Was that before any real estate was bought or after some portions had been bought?

A. Before.

92 X Q. Before anything was done?

A. Before anything was done.

93 X Q. And no money had been furnished?

A. No.

94 X Q. Then you were all present when you made this first employment you spoke of?

A. I am not certain, but I think all three of us were present.

95 X Q. And you think Kilbourn and Latta represented the firm?

A. Kilbourn and Latta represented the firm. I do not remember with which member of the firm we first talked.

96 X Q. Was there anything reduced to writing touching the various agreements?

A. There was not.

444 97 X Q. You were under no obligations to furnish any money or to buy any real estate unless you wanted to?

A. Legally we were not.

98 X Q. Well, how was it morally or otherwise?

A. We were certainly under obligations morally to furnish them that money which we agreed with them to furnish.

99 X Q. How much did you agree to furnish them?

A. Over one hundred thousand dollars.

100 X Q. Was that understanding had at the time of this interview between you three gentlemen on the one side and Kilbourn and Latta on the other?

A. The understanding was that we should furnish whatever money was necessary to make the cash payment on any purchases made by them on our account.

101 X Q. They were not to make any purchases unless you passed your judgment upon the property and instructed them to buy it,

were they? Did they have the liberty under the terms of this understanding to go and buy any real estate they chose and then make you pay for it? How was that?

A. So far as I remember, the joint purchases were submitted to us before the purchases were completed.

102 X Q. I do not want to know what the fact was as to
445 the various purchases; I want to know what the form of the preliminary bargain was between the firm of Kilbourn and Latta and you three gentlemen?

A. The preliminary bargain was that they were to serve us as brokers for the purchase of real estate, and in our interest.

103 X Q. Were they to serve you gentlemen exclusively?

A. Exclusively.

104 X Q. Then they were to do no other business for anybody else?

A. In the purchases which we proposed to make and in the purchases which they recommended they were to serve us and nobody else.

105 X Q. That was part of the preliminary bargain, was it?

A. It was.

106 X Q. The preliminary bargain specified that much?

A. Yes.

107 X Q. Is that an inference of yours, or was there something said about it?

A. I do not know that there was anything said about it except that they were employed by us as our brokers in our interest and to serve us and nobody else.

108 X Q. What was the name of your combination or partnership—you and Mr. Hillyer and Mr. Stewart; did you have a partnership name or firm title?

A. There was no name except in the accounts rendered by
446 the firm of Kilbourn and Latta, and that was Sunderland, Hillyer and Company, as far as I recollect.

109 X Q. That was the way you were usually designated by them?

A. They rendered the account in that way, and that is all I know about it.

110 X Q. Your combination was a copartnership, was it not?

A. It was not.

111 X Q. Wherein did it differ from a copartnership?

A. We purchased as tenants in common.

112 X Q. Did you have an agreement between yourselves in writing?

A. We did not.

113 X Q. You were to share the profits with each other, were you not, according to the extent of your investment?

A. There was no agreement as to profit or loss.

114 X Q. The bargain was that you should furnish one-half of the money and they the other half, and that you were to receive one-half the profits and they the other half. Is that right?

A. That is not right.

115 X Q. Well, please state what the arrangement was.

A. I was to furnish one-half the money; Stewart and Hillyer were to furnish the other half of the money; that was the extent of the agreement.

116 X Q. The agreement stopped short there, did it? Was
447 there no understanding as to the division of the profits when the sales were made?

A. No agreement.

117 X Q. What was to be done with the money when the sales were made?

A. No agreement.

118 X Q. It was understood that you were to sell the property, was it not?

A. It was the intention to sell whenever a reasonable profit could be made on the purchase price.

119 X Q. Well, the tacit understanding was that the profits were to be divided *pro rata*, was it not; you to receive half the profits and your money back and they to get their money back and half the profits to be divided between them. That must have been so, must it not?

A. I suppose that would be a correct conclusion.

120 X Q. But you say there was nothing said about it.

A. No.

121 X Q. And then the understanding must have been, tacitly or otherwise, that if there were any losses they would be sustained by each of you in proportion.

A. Well, that was a matter of law.

122 X Q. Well, your judgment as a lawyer would say that was the proper conclusion?

A. Yes.

123 X Q. You have nothing further to say about the details of that bargain with Kilbourn and Latta?

A. Nothing.

448 124 X Q. You have told us all about that that you recollect?

A. All that I remember.

125 X Q. Is it not the fact that there was not much said at that interview, and that you made your terms as you went along, as you bought a piece of property?

A. Never any terms agreed upon in reference to any particular piece of property.

126 X Q. None whatever?

A. No.

127 X Q. What was the first piece of property you bought—square 156, was it not?

A. I cannot tell without the account.

128 X Q. Well, we will let you look at the account (handing account to witness).

A. (After examining account.) Square 156 was the first piece of property bought.

129 X Q. You are looking at what?

A. I am looking at the account rendered by Kilbourn and Latta.

130 X Q. That is Exhibit A in this case. The first investment you made was in square 156. Now, do you know in whom the title to that property was vested at the time it was conveyed for your benefit or at the time you bought it?

A. I do now, but did not at the time the purchase was made.

131 X Q. Well, was there anything said to you about it at
449 the time?

A. They said that the title had been examined, passed upon, and was perfect.

132 X Q. You took no notice of the deeds of conveyance, did you?

A. No deed for the conveyance of any property to us or to me was ever exhibited to me.

133 X Q. Well, as a matter of fact, there was no separate conveyance ever made to you or either of you. It was made to Latta as trustee, was it not? Were you aware of that at the time?

A. The agreement, at the request of the firm of Kilbourn and Latta, was that the title should be conveyed to Mr. Latta, as trustee, in all cases.

134 X Q. When was the agreement that you speak of made? That was not one of the details of the bargain at the first interview. When was that agreement to which you now allude made?

A. It was made before any purchase was made by us.

135 X Q. But it was not made at the time of this first interview, was it?

A. It was made at the interview with the firm of Kilbourn and Latta when we determined on our part to make these purchases.

136 X Q. Did you ask anybody to let you look at the deeds of conveyance?

A. I never did.

137 X Q. You did not want to see them, did you?

450 A. In 1878 I asked to see the deeds.

138 X Q. I do not want to get so far ahead as that. I want to keep down to the time this business was going on in 1872. Did you ask in 1872 to look at the deeds of this property?

A. I did not.

139 X Q. There is no doubt but you could have seen anything you wanted to see if you had asked for it.

A. I do not know.

140 X Q. What do you think about it? You know very well they would have let you seen any paper connected with you business if you had asked for it.

A. I think from the fact that these deeds were not recorded until October, 1872, that the firm of Kilbourn and Latta did not want me to see the deeds.

141 X Q. If you had demanded to see the deeds of conveyance to this square 156 and the abstract of title and all that, do you think Kilbourn and Latta would have refused to let you see them?

A. Possibly not.

142 X Q. Well, Judge, do not you know that they would not have

refused? If they had refused you would have stopped doing business with them instantly, would you not?

A. When we called on the firm for our account and for the deeds and other papers, in 1878, connected with our business and
451 on receipt of our account we took our business from them at once.

143 X Q. That was long after the dissolution of the firm, was it not?

A. It was in 1878.

144 X Q. Mr. Latta had all the deeds then, had he not?

A. I was so informed by Mr. Olmstead.

145 X Q. Well, you did not doubt it, did you?

A. No; I did not; I do not doubt it now.

146 X Q. You stated a little while ago that you thought, from the fact that these deeds were not put on record till October, 1872, that they desired to conceal them from you. (The witness's answer to question 140 was here read to him.) Was it not understood, in reference to your answer to that question, that these deeds should be withheld for a reasonable time in order that the fact of the heavy purchases might not operate upon the market to your disadvantage? Were those deeds not withheld from record and at your request and with your consent and approbation?

A. They were not.

147 X Q. Didn't you know the fact that they were not to be put upon record?

A. I did not.

148 X Q. Did you know or were you informed that the deeds of property bought by the Real Estate Association were not put upon record until after the expiration of a few weeks or months?

452 A. I never knew anything about those.

149 X Q. You have no recollection of having been told of that fact?

A. I have not.

150 X Q. Well, if you had been told would you have remembered it?

A. I do not know that I would, for it was of no interest to me.

151 X Q. Was it not one of the objects in view of all parties to this business to prevent any increase in the excitement of the real estate market?

A. It was.

152 X Q. And you were willing that the real estate market should be excited just as little as possible by these purchases?

A. While we were purchasing we did not want to do anything or say anything that should advance property in that part of the city.

153 X Q. And that was one of the objects in putting the title in the name of Latta as trustee?

A. That was one of the objects.

154 X Q. It was another move in that direction to keep these deeds off the public records for a short time. Don't you remember it in that connection?

A. I do not. There was never anything in the world said to me about that.

155 X Q. Let me refresh your memory. Don't you re-
453 member a discussion or a conversation between you gentlemen in which it was stated that under our statute here a deed may be lawfully withheld for six months from the record; that a deed recorded within six months was just as good as one recorded within six minutes?

A. I think I did hear a discussion of that kind.

156 X Q. Was not that subject discussed in connection with the intention declared by the firm of withholding these deeds from the record until the purchases should be completed so far as you gentlemen were concerned?

A. I do not remember that any such——

157 X Q. Well, in view of the fact that you heard this conversation, do you still say that you are of the opinion that they did not want you to see the deeds because they were kept from the record?

A. I do not think they wanted me to see the deeds because they never exhibited them to me.

158 X Q. Well, is it likely they would show you a deed if you did not ask for it?

A. If I were acting as an agent for anybody and had a paper pertaining to the business for which I was acting, I would exhibit to him that paper.

159 X Q. Well, if you employ an attorney to prepare an instrument relating to your business, would you not, as a business man of ordinary care, go and ask him to let you look at it?

A. As a matter of prudence, as I now see, I should have
454 called for those papers and deeds to examine them.

160 X Q. If you had called for them you surely would have seen them, would you not?

A. I presume so.

161 X Q. Do you remember any circumstances, looking back from this point of time, which strikes you as a manifestation of a disposition to conceal anything from you on the part of any member of that firm?

A. I do, of all the members of the firm.

162 X Q. Will you please to name the circumstances or any one of them?

A. In not rendering us an account current from June, 1872, until the summer of 1878, and from their failure during the time of the making of these purchases to show me the abstracts of title and the deeds conveying the title to Latta as trustee.

163 X Q. Did you ever ask for an account current?

A. From 1872 till 1878, I did not.

164 X Q. Did you visit their office frequently while you were in the city?

A. I did.

165 X Q. When you were absent from the city, did you correspond with them?

A. I did.

166 X Q. They have rendered several accounts current, have they not—that is, during these periods?

455 A. They rendered no account current from June, 1872, until June or July, 1878, so far as I know.

167 X Q. Was there no account rendered in June, 1872, or about that time?

A. I say in June, 1872, there was an account rendered. It was on the 26th of June, I think.

168 X Q. Well, was there not a monthly statement of your account sent to you afterwards or handed to you?

A. None at all. I got accounts, or rather a notice of what would be due on taxes, interest, and deferred payments, but never any account current until 1878.

169 X Q. Those short accounts current were nothing more than continuations of the general account which they had rendered to you, were they?

A. There were no accounts currents rendered to me after June 26th, 1872, until 1878.

170 X Q. Your business of buying real estate terminated in 1872, did it not? Did it extend beyond 1872?

A. The joint purchases made by myself, Hillyer, and Stewart terminated in 1872, in the month of June. I individually made purchases afterwards.

171 X Q. Well, your individual matters have nothing to do with this suit, as I understand it.

A. I do not see what they have.

172 X Q. This is a joint suit by you and Mr. Hillyer. Your

456 individual matters are not concerned, so we will leave them out, if you please. Your joint purchases ended in June, 1872, and on the 26th of June, 1872, they rendered an account current. That is true, is it not?

A. Yes.

173 X Q. That included all the joint purchases made up to that time?

A. Yes.

174 X Q. Will you please explain to me what you mean by an account current after that time? An account current after that would be nothing more than a simple statement of little items of taxes which they had paid or anything of that sort? Now, will you explain for our information what is an account current applicable to that state of affairs?

A. I understand that an account current gives receipts and disbursements for the party with whom the account is made.

175 X Q. There were, you say, some kind of accounts rendered from time to time after June 26. What did they contain?

A. I never had any account rendered to me. I had advices from the firm of Kilbourn and Latta that payments would be due on taxes, interest, and deferred payments on the property.

176 X Q. In what shape were those advices?

A. In letters.

457 177 X Q. Where are they?

A. I do not think I have any of them now.

178 X Q. What did you do with them?

A. I either lost or destroyed them.

179 X Q. Well, that was all there was to communicate with you, either by advice or account current, the simple fact that so much money had accrued or that they had paid so much, if they had paid any, or that they had received so much, if they had received any, from you or from any other source. Now, what more than that could you have put into an account current?

A. The account current would have given information as to what money had been received by the firm of Kilbourn and what paid out. These advices received from the firm of Kilbourn and Latta were as to payments to be made.

180 X Q. From where did they receive money, except from you?

A. They received money from Mr. Hillyer and myself.

181 X Q. You transmitted all this money yourself, did you not?

A. I did not.

182 X Q. They acknowledged the receipt of all the money you sent them, didn't they; there is no controversy about that. Am I right?

A. I do not think there is any controversy about that.

183 X Q. They promptly acknowledged the receipt of any
458 money you gentlemen sent them, didn't they?

A. I do not remember about their acknowledging its receipt. I presume they did.

184 X Q. At all events, there is no doubt, in your own mind, that that is all right?

A. We do not raise any question about that.

185 X Q. They did not collect any rents, did they?

A. The accounts show that they did.

186 X Q. Well, they rendered an account of that, didn't they?

A. I believe they did.

187 X Q. So that, in fact, all that there was to do was to acknowledge the receipt of money for rents and of moneys sent by you, and to notify you when your obligations were about to mature?

A. That was all.

188 X Q. And they did all they were required to do, didn't they—I mean in that direction?

A. I think they acknowledged the receipts of all the moneys sent them and notified us of the disbursement of that money.

189 X Q. There was a constant publication in the daily papers here of the conveyances of real estate during the time you made your purchases, was there not?

A. I do not know.

190 X Q. If these gentlemen had told you that it was for the benefit of your own interest to withhold those deeds from
459 record you would have said withhold them, would you not?

A. I presume I would, because I took their advice in all matters in reference to this real estate.

191 X Q. Now, I believe we will go back to square 156, if you please. Who first directed your attention to square 156?

A. I do not remember.

192 X Q. Well, was it Kilbourn, Latta, or Omstead?

A. I do not remember.

193 X Q. Who went first with you to see square 156?

A. That I do not remember.

194 X Q. How long before the trade was concluded was it when you first saw square 156?

A. That I do not remember.

195 X Q. Did you see it at all?

A. I did.

196 X Q. That was a very desirable purchase, was it not, at that time?

A. I thought so.

197 X Q. You were very anxious to get hold of it, were you not?

A. We were anxious to buy any large square which was an entirety.

198 X Q. And that was an unbroken square, was it?

A. Yes; it was an unbroken square.

199 X Q. Were you told at the time of this purchase that the Real Estate Association had paid 20 cents a foot for it, and that you could have it for twenty-seven and a half cents (27½c.)? Do you re-

460 member that?

A. I know that I was not told that the Real Estate Association owned that property, nor was I told who owned it.

200 X Q. Did you know that the title was vested in James M. Latta, trustee, at the time you bought it?

A. I did not. I have since learned from the record that Hallet Kilbourn, trustee, was the owner of the property when we bought it.

201 X Q. You did not know that fact at the time of the purchase by your combination?

A. I knew nothing of the source of the title to that or any other property which we bought at the time of the purchase of it.

202 X Q. Didn't you ever look at the abstract?

A. I never saw an abstract to any part of the property which we bought.

203 X Q. You had information that they always had an abstract made, had you not?

A. I was so told by the firm of Kilbourn and Latta.

204 X Q. You did not want to see the abstract particularly, did you?

A. They always told me that they had an abstract to each piece of property purchased, and it was satisfactory to them, and on their assurance that it was satisfactory to them it was satisfactory to us.

205 X Q. The titles have turned out good in every instance,

461 have they not?

206 X Q. They have turned out as represented, have they not?

A. They have not.

207 X Q. Wherein have they differed from the representations?

A. Lot 3, square 158.

208 X Q. Did they buy that for you?

A. They did.

209 X Q. What was the matter with the title?

A. It is a tax title, which is not marketable.

210 X Q. Did they represent that to be a good title?

A. They did.

211 X Q. Did the abstract so represent it?

A. I do not know what the abstract represented.

212 X Q. Have you never seen it?

A. No.

213 X Q. Who made the abstract upon which they made their statement to you?

A. I was informed by the firm that Mr. Ashford made all the abstracts.

214 X Q. Can you state how much you paid a square foot for this square 156?

A. No; I cannot.

215 X Q. You had no information at the time of the advance made in the sale to you over the purchase price to the association?

A. I had no knowledge of any advance or of the ownership of the property.

462 216 X Q. Did you make any inquiries as to who the seller of that square was?

A. I made no inquiries as to the ownership of that square or any other property which we purchased.

217 X Q. You have looked at this paper—this account current—called "Exhibit A." Does this represent or designate all the purchases which you made in the city of Washington through the firm of Kilbourn and Latta?

A. It represents all the purchases made by Stewart, Hillyer, and myself.

218 X Q. Yes; by you three gentlemen. Will, this controversy in which we are now engaged relates to the property mentioned in this "Exhibit A," does it not?

A. I know of no other.

219 X Q. I only wanted to get that fact down for my information as much as that of anybody else. Now, by this paper it appears that the first purchase was made on the 27th day of May, 1872. On that day you purchased square 156 for ninety thousand four hundred and twenty-nine dollars and ninety cents (90,429.90). You made your last purchase on the 19th day of June, 1872, on which day you bought lot 8, square 158. Now, is that correct, according to your recollection?

A. I have no recollection, except by the account rendered, and which is now in evidence.

463 220 X Q. Called Exhibit A?

A. Yes; I mean to say that I have no recollection as to the dates except by the account rendered.

221 X Q. Assuming that Exhibit A is correct, you made in the space of twenty-three days purchases of several pieces of real estate

in this city for the sum of some three hundred and seventy thousand dollars ($370,000,00)?

A. Yes.

222 X Q. You were pretty busily engaged looking at these various pieces of property during those twenty-three days, were you not?

A. I was.

223 X Q. Were your associates here all that time during those twenty-three days? I mean Mr. Hillyer and Mr. Stewart.

A. They were.

224 X Q. Did you all go and look at each piece of property before buying it?

A. We did not.

225 X Q. Did some one of you go to see each piece?

A. I think we did not go to see small lots purchased, but the squares some of us did go to see.

226 X Q. Did you or any of your associates ask Kilbourn or Latta or Olmstead who the owner was of this square No. 156 or of any other square or piece of property prior to the purchase by you?

464 A. We did not, for two reasons: First, we had employed the firm of Kilbourn and Latta as our agents and brokers to take care of our interest in the purchasing of the property; and, second, we had been advised by the firm that it would be inappropriate and detrimental to our interest if we should undertake to negotiate with the owners of the property when we purchased it.

227 X Q. Brokers all attended to the business themselves in such transactions and do not usually give the names of either the buyer or the seller; is not that a fact?

A. So far as I know that is the rule of brokers.

228 X Q. It is the universal rule of real estate brokers that you know anything about, is it not? They could not get along in any other way, in your judgment, could they? If you were a real estate broker you would pursue that course, would you not?

A. I think that is the custom of brokers.

229 X Q. Did you know at the time you purchased lot 10, in square 158, that the firm owned it?

A. I did not.

230 X Q. Did they not tell you they owned it?

A. They did not.

231 X Q. You did not care whether they owned it or not, I suppose, did you?

465 A. If I had been told that they owned it I would have made further inquiry about the price.

232 X Q. Is that the only lot you purchased in that square?

A. No, sir.

233 X Q. Did you pay any more for lot No. 10 than for any of the other lots? I mean any more per square foot. Did you pay a greater price for it than for any other lot in that square?

A. I can only refer to the account rendered.

234 X Q. Well, is there any doubt about the account rendered being correct in its details?

A. I have not raised any question about the account rendered?

235 X Q. Were you and your associates very anxious to get hold of square 159? You bought square No. 156 and part of square 158. Were you not also very anxious to get hold of square 159?

A. I do not remember.

236 X Q. Square No. 159 was secured by Mrs. Williams or a large portion of it. Does that refresh your memory in any way?

A. Yes; it does.

237 X Q. Now go on and tell us about square No. 159. How much did you offer for it?

A. I do not remember that we ever made any offer?

238 X Q. You say you do not remember that you made any offer?

466 A. I do not.

239 X Q. Did you not tell Kilbourn and Latta to offer sixty-five cents a foot for that square?

A. I do not remember that we ever made any offer.

240 X Q. Were they not figuring and negotiating with the owner of it for you for a long time?

A. I do not know. I would say in addition that we desired to purchase that square, I remember, but what offer, if any, we ever made for it I do not remember.

241 X Q. Now, Judge, when you found out that you could not get square 159, did you not tell Kilbourn and Latta that they must secure for you all they could of square 158, and did you not say that they should secure all of it they could at the rate of fifty cents a square foot?

A. I do not remember anything of the kind.

242 X Q. If it is true that you did that would you remember it?

A. Possibly not.

243 X Q. Now, will you look, please, at Exhibit A and state whether it is not a fact that each lot of square 158 was secured by them at the rate of fifty cents a foot?

A. I do not know.

244 X Q. Have you no way of finding out whether it cost you more than fifty cents a foot or not?

467 A. I have not without a survey and a computation of the number of square feet in each lot.

245 X Q. You say that in the original bargain the subject of commissions was disposed of in this way: That if they could get commissions from the seller of property which you purchased that then you should not be charged with commission. Do I state it correctly?

A. You do.

246 X Q. Well, then, you regarded the firm as the agents of the seller as well as of the buyer, did you not?

A. I did not.

247 X Q. Did you not expect them to keep faith with the seller as well as with you?

A. I expected them as our agents to keep faith with us.

248 X Q. If the seller of the property paid the firm of Kilbourn and Latta for their services they were entitled to the good faith and

the best skill and industry of the firm. Is not that a true principle of morals as well as law?

A. We employed them as our brokers to look after our interests and to advise us as to all purchases and to act in our interest alone, and we did not expect them to be interested in the sales of property, either as brokers or principals.

468 249 X Q. Then you were entitled to all the skill and industry and experience of this firm whilst the other party was paying for it, according to your theory of the agreement?

A. My theory of the agreement is that they, as they represented, would get, first, the lowest price at which a party owning real estate would be willing to sell it, and then, as they represented, they might make him or them pay brokerage in addition to the price which they asked for the property, and in that case the brokerage was to be charged and charged to the party selling, which simply meant that we were to pay so much less than the party asked for the property, in which case we paid brokerage on every piece of property purchased.

250 X Q. Can you tell me exactly when any member of the firm said they would not charge you commissions if they got commissions from the seller of the property?

A. It was before we purchased any property. The exact time I do not remember.

251 X Q. That was the understanding when you made any particular purchase, was it?

A. It was the understanding in reference to all purchases and not in reference to any particular one.

252 X Q. You probably would not have engaged in busi-
469 ness with the firm if they had told you they would charge both sides commissions, would you?

A. I would not.

253 X Q. Please look at Exhibit A and tell me, as a matter of fact, whether or not they have charged you anything there for commissions for the purchase of any piece of property.

A. They have.

254 X Q. Will you point out where it is?

A. For the purchase of lots in square 67.

255 X Q. Are there any other charges for commissions on this account?

A. There is no other item of commission charged in that account.

256 X Q. Then all the commissions that these gentlemen ever charged your combination was the sum of three hundred and thirty-nine dollars and twenty cents ($339.20). Is that true?

A. That is the only item in the account for commissions.

257 X Q. And that was all that was charged in purchases amounting to three hundred and seventy thousand eight hundred and eighty-nine dollars and thirty-nine cents ($370,889.39)? That is practically no charge of commission, is it not?

A. Yes.

470 258 X Q. What was the peculiarity in the purchases of those lots in square 67 which brought about this charge of

three hundred and thirty-nine dollars and twenty cents ($339.20)—do you know?

A. I know nothing except from the account.

259 X Q. As a matter of fact the firm has never received any compensation for the purchases which they conducted in your behalf, except the small item which I mentioned?

A. From us they have only received as commission the amount named.

260 X Q. How did you expect these men to be paid for the services which they rendered you? Their services were, of course, valuable.

A. They told us that in a great many cases where they were purchasing property for us they could get commissions from the seller.

261 X Q. That we understand. Now, you expected to get the benefit of their knowledge of the market, of real estate, of titles, and the business of conducting real estate sales without paying for it, did you?

A. I did not.

262 X Q. You, then, expected these gentlemen to get their compensation in some way in the trade without charging you directly for brokerage. Is not that true?

471 A. We had in all cases to pay, directly or indirectly, brokerage on the purchases.

263 X Q. Who first brought to your attention square No. 115?

A. I do not remember.

264 X Q. Well, was it through one of the members of the firm of Kilbourn and Latta? Somebody told you that it was for sale.

A. I cannot remember. I do not think it was either member of the firm.

265 X Q. Do you know where this square No. 115 is?

A. I do.

266 X Q. Where?

A. Between Nineteenth street, New Hampshire avenue, N street, and some other street. It fronts on Dupont Circle.

267 X Q. Do you remember how much you paid for that square; I mean how much per square foot?

A. We paid for the square sixty-five thousand dollars ($65,000.00). I do not know how much per square foot.

268 X Q. Was that any more than it was worth at the time?

A. At the time we did not think so.

269 X Q. If the real estate market had kept up it would not have been more than it was worth at any time, would it?

A. I think not.

472 270 X Q. It is worth a great deal more than that now, is it not?

A. It is.

271 X Q. You cannot recall the person who first told you that lot was for sale, can you?

A. I do not remember. I know that Mr. Hillyer and I and, I think, Mr. Stewart were attracted by the square and told Kilbourn

and Latta that we would like to buy that square if it could be had at a fair price.

272 X Q. Then you conveyed the information to Kilbourn and Latta that that square was desired by you in the first place?

A. I will not say absolutely that in the first place we did, but that is my recollection.

273 X Q. You say in your bill, Mr. Sunderland, if I recollect aright, that you invited the attention or directed the attention of Kilbourn and directed the attention of the firm to that square. Do you think that is correct?

A. We did that.

274 X Q. Well, now, did not one of the members of the firm point that out to you and tell you that you might secure that piece of property by paying sixty-five thousand dollars ($65,000.00) for it—that it was for sale at that figure?

A. I do not remember about that.

275 X Q. Well, do you remember sufficiently to say that they did not do it?

473 A. I will not say that.

276 X Q. You have said in your bill that you thought you called their attention to that square; now, I have refreshed your mind on that subject and I want to know now, after having your memory refreshed and invited to this particularly, what you think about it—what is your best memory about that fact as to who directed the attention of the other first to that property?

A. My impression is that Mr. Hillyer, Mr. Stewart, and myself were attracted by the growth of trees around that square and we were desirous of purchasing it. I first called the attention of Kilbourn and Latta to that square and desired—or requested, them rather—to make the purchase, if they could, at a fair price.

277 X Q. Did they not tell you at the time that they had been negotiating for that square for more than a year?

A. That I do not remember.

278 X Q. Well, if they had told you that would you have forgotten it?

A. Possibly I might.

279 X Q. Do you remember that they told you that they had previously had the refusal of that identical square at the figure of twenty-five thousand dollars ($25,000.00) two years before that,

474 or about two years before that; do you remember that they said anything of that sort to you?

A. They never said anything of the kind to me.

280 X Q. Did they ever say that in your hearing?

A. Never in my hearing.

281 X Q. Do you remember any intimation of that kind ever being made by any of them?

A. There was no such intimation made.

288 X Q. How long after your attention was brought to that square was it before the purchase was concluded?

A. Only a short time.

283 X Q. Did you make any effort or did you have any anxiety

to get square 139 at that time? Square 139 lies directly south of the British minister's and south and east of square 115.

A. I was anxious to get that square.

284 X Q. Well, does that fact refresh your memory any as to the other square, No. 115?

A. It does not.

285 X Q. You say a short time elapsed between the initiation of the dealing and the close of it; what do you mean by that—a week or two weeks? Give me your recollection as to the time as accurately as possible.

A. I should say two or three weeks.

286 X Q. What price did you offer or express yourself as willing to pay for square 139?

A. I do not remember.

475 287 X Q. Was there anything said about the firm of Kilbourn and Latta? I mean anything said about Kilbourn and Latta being interested jointly with you in the purchase of square 139, should you get it.

A. Well, that I do not remember.

288 X Q. Did you not run the price up to sixty-five cents as to square 139 against Mr. Ingersoll?

A. I do not know that I ran the price up against anybody, and I did not know at the time that Mr. Ingersoll wanted to buy it.

289 X Q. Do you know how much you did run it up?

A. I do not remember.

290 X Q. You made several bids on it, did you not?

A. I think so. I was very anxious to get the property.

291 X Q. And you were willing that the firm of Kilbourn and Latta should go in jointly with you in the speculation, were you not?

A. I think it is possible, but I do not now remember it; but that was a proposition of my own individually and not connected with Mr. Stewart and Mr. Hillyer.

292 X Q. How at that time did the value of square 115 compare with that of square 139; was it worth more or less?

A. Square 139, being on Connecticut avenue, was worth more in the market per square foot than square 115 was.

293 X Q. How much more valuable was it? What would
476 be the difference in your mind as to the price—I mean at that time?

A. I cannot say.

294 X Q. I understood you to say some time ago that your limit of purchases was one hundred thousand dollars, or that you agreed to purchase as much as one hundred thousand dollars' worth of property. Am I correct about that?

A. You are not.

295 X Q. Well, was there any limit or extent of purchase specified?

A. No limit or extent of purchase was specified.

296 X Q. You simply proposed to purchase whatever pieces of

property might strike your fancy as the pieces of property were brought to your notice. Is that right?

A. We proposed to purchase a considerable amount of property which we might designate or the firm of Kilbourn and Latta recommend to us without any limit as to quantity or value.

297 X Q. Did you, as a matter of fact, buy all the property which they recommended you to buy?

A. I think we did.

298 X Q. Did you buy any pieces of property which they did not recommend?

A. We did.

299 X Q. Which pieces?

A. Square 195.

477 300 X Q. They were opposed to or advised against your buying square 195 because the price was too high, were they not? Am I correct?

A. I know nothing of what they advised in reference to that property until after it was purchased, and then some member of the firm told me they could have bought it for a less price.

301 X Q. Which member?

A. I do not remember.

302 X Q. You paid James G. Berret one thousand dollars for his services in that matter, did you not?

A. I so understood, but I never had any negotiations with Berret myself, individually.

303 X Q. Who did?

A. I do not know.

304 X Q. Well, was it Hillyer or Stewart? It was one of the two, was it not?

A. I presume so.

305 X Q. Did you not instruct the firm to take all the lots in square 158 which they could secure at fifty cents a square foot?

A. It is possible we did, but if so it was on their statement that it would be a desirable purchase.

306 X Q. Well, the purchase was desirable at that time, was it not?

A. I do not think so.

307 X Q. You looked at it, did you not? You passed your
378 own judgment on the value of the square and the desirability of the purchase?

A. I looked at the property before we purchased any part of the square.

308 X Q. Did you pass your judgment upon it?

A. I confirmed the judgment of the firm of Kilbourn and Latta as they gave it to me.

309 X Q. Did Mr. Hillyer and Mr. Stewart examine it also?

A. I do not remember.

310 X Q. Did not you and your associates express a desire to Kilbourn and Latta to get control of that property facing upon Massachusetts avenue, about that particular place?

A. I think not.

311 X Q. Is it not a fact that you did have such a desire?

A. That is possible.

312 X Q. Is it not a fact?

A. We knew we could not get control of that on Massachusetts avenue. While we might have had the desire, we knew we could not get it.

313 X Q. Well, you knew a great deal of it could be purchased, did you not?

A. We were so informed.

314 X Q. And you were ambitious to get just as much of it as possible, were you not?

A. Yes.

315 X Q. After you found you could not get square 159 were you not still more anxious to control the remainder of the property there—I mean the property between Seventeenth and Eighteenth streets on Massachusetts avenue?

479

A. I was not.

316 X Q. Were your associates?

A. I think not. We were desirous of getting property facing on Massachusetts avenue, because we thought that a great thoroughfare of the city, but not specially in square No. 158 more than anywhere else.

317 X Q. As a matter of fact, the property facing on Massachusetts avenue in that locality is to-day amongst the most desirable property in the city, is it not?

A. On the south side I do not think it is.

318 X Q. How is it on the north side?

A. Very desirable.

319 X Q. What is the highest price at which it has been sold on the north side?

A. I do not know.

320 X Q. Have you heard that any property was sold there as high as two dollars per foot?

A. I do not remember.

321 X Q. I want to bring your attention back to square 155 and what you stated about that. You said something about the firm having retained eighteen thousand dollars which I did not understand and do not now. Will you please explain what you meant by that? What did you mean by saying that they had retained eighteen thousand dollars?

480

A. They charged us as having paid on square 155 as cash payments on the purchase eighteen thousand four hundred and forty-four dollars and sixty-five cents ($18,444.65), and appropriated that amount of money which we then had with the firm to our credit.

322 X Q. Did you mean to intimate that there was a doubt as to whether they paid the eighteen thousand dollars or not?

A. I did.

323 X Q. You think they did not pay it, do you?

A. I know they did not.

324 X Q. What did they do with it?

A. They appropriated the difference between what they paid and what they charged us with to their own benefit.

325 X Q. Then they told you, in fact, that they had paid eighteen thousand dollars towards the cash payment on the purchase, when in fact they had not done so. Is that what you mean?

A. I know that simply from their account.

326 X Q. Well, how do you know it from the account? Read what the account says which give you that knowledge.

A. I have read the account.

327 X Q. Look at the account and point out the particular
481 part of it which impart- that information to you.

A. The account is Exhibit B.

328 X Q. Have you looked at it?

A. I have.

329 X Q. Now, what particular portion of it gives you that information?

A. The charge on square 155.

330 X Q. Shall I read from this account, Mr. Sunderland, or will you read the entry yourself which gives you that information?

A. This account professes to be an account of cash payments made by Kilbourn and Latta for Sunderland, Hillyer and Company, and, amongst other items, they charged us, on the date of June 8th, 1872, with having paid as cash payment on square 155 eighteen thousand four hundred and forty-four dollars and sixty-five cents ($18,444.65).

331 X Q. Now, you say, as a matter of fact, that they did not pay that eighteen thousand four hundred and forty-four dollars and sixty-five cents ($18,444 65), as set down in that Exhibit B, do you?

A. I only know that.

332 X Q. Well, do you say that you know it?

A. Yes; from the statement of other parties as to the amount of money paid.

333 X Q. Please name the other parties.

482 A. Mr. Burgess.

334 X Q. What Mr. Burgess?

A. The gentleman who testified yesterday.

335 X Q. Do you know anything more than what Mr. Burgess said about it?

A. I do not know anything more. I have heard statements from other parties.

336 X Q. You have heard Mr. Burgess' statement, you say. Now tell us what other man, woman, or child said so. Name one more.

A. Well, Col. Downman.

337 X Q. You mean Raleigh W. Downman?

A. Yes.

338 X Q. When did he say so?

A. Within this year.

339 X Q. Did Mr. Downman know anything about the business at the time? You being a lawyer, I need not remind you that I want you to state what you know as to this matter of Downman's knowledge.

A. I do not know.

340 X Q. When I ask you what anybody told you, of course it is not your fault if you answer my question. You do not know, then, whether Mr. Downman knew anything about this transaction or not?

A. Except what he told me.

341 X Q. Well, that makes two persons. Could you name any more?

483 A. No.

342 X Q. Then all you know in regard to the fact of that entry being false is what Mr. Burgess or Mr. Downman told you or said. Am I right about that?

A. That is all that I know.

343 X Q. Mr. Sunderland, prior to the institution of this suit did you make any demand upon Mr. Olmstead or Mr. Kilbourn for any information about the business involved in this proceeding?

A. We demanded of them in 1878 an account. Prior to the commencement of this suit we called the attention of Messrs. Kilbourn and Olmstead to certain items embraced in this suit, and demanded that they should pay us the amounts which we specified in that demand.

344 X Q. What did they say in response to your application?

A. I think they made two replies.

345 X Q. Are they in writing?

A. They were.

346 X Q. Cannot you produce them?

A. As far as I am concerned, I cannot.

347 X Q. Who has them?

A. I have not got them.

348 X Q. Well, has Mr. Hillyer got them, or your counsel?

A. He did have them.

349 X Q. Well, is there any secret about it?

484 A. None that I know of.

350 X Q. You can produce them, then, can you? If you cannot, we can.

A. I do not know whether Mr. Hillyer can or not. I have not got them, I know.

351 X Q. Did they not offer to show you anything that might be necessary to throw light upon the proposed controversy by way of satisfying you gentlemen, or something to that effect?

A. Our only communications in reference to the items in this suit, aside from the charge for care and management of real estate, were all in writing.

352 X Q. Did you go to the office of Olmstead or Kilbourn and Olmstead or any of them to make these inspections which they offered?

A. I did not.

353 X Q. Did any of you gentlemen? Did Mr. Hillyer or your counsel?

A. I think not.

354 X Q. When did you go to Europe?

A. In the early part of May, 1873.

355 X Q. How long did you stay?

A. I stayed until October, 1873.

356 X Q. Then you returned?

A. I returned to the Pacific coast; not here.

357 X Q. When did you come here?

A. In the year 1878.

485 358 X Q. Not before that; were you absent from 1873 to 1878?

A. I was absent from the spring of 1873 to the summer of 1878.

359 X Q. Did you have correspondence with Kilbourn and Company?

A. I had correspond with them.

360 X Q. Did you always respond to them when they called upon you for money to pay the deferred notes coming due?

A. I always, until some time in 1876, forwarded to them all the money that they called for.

361 X Q. In 1876, did you say?

A. Until some time in 1876; I do not remember what month.

362 X Q. Was it not in 1874?

A. No.

363 X Q. What was done when you failed to provide for the payment of maturing notes by you?

A. There was nothing done by me.

364 X Q. The notes were not signed by you, but by Latta as trustee. Is not that correct?

A. The most of them, where any member of the firm incurred a liability, were signed by Latta as trustee, but neither the firm nor any member of it ever assumed a liability above one hundred and thirty thousand dollars.

365 X Q. Did they assume liability as high as that?

A. No; it was less than that.

486 366 X Q. How much less?

A. A little less.

367 X Q. Twenty-five thousand dollars?

A. Yes.

368 X Q. They had to carry all this overdue paper as best they could, had they not?

A. I do not know why they should. We were the parties responsible and not the firm of Kilbourn and Latta.

369 X Q. Did you not tell them they must take care of them as best they could?

A. It is possible I might have said so; I do not remember.

370 X Q. Did you not also tell them that you could not do it?

A. I think in the summer or fall of 1876 I either told them I could not or would not pay any more money; that I had paid enough on the property, and it should take care of itself.

371 X Q. Did not that happen as early as 1874?

A. No.

372 X Q. In 1875?

A. No.

373 X Q. Could not it have been earlier than 1876?

A. No.

374 X Q. You are sure you are not mistaken about the date?

A. No.

487 375 X Q. These gentlemen's names were on this paper, were they not?

A. I think not.

376 X Q. Your name was not on the paper nor Mr. Hillyer's. I am now speaking of these deferred notes which were not taken care of at maturity.

A. The name of Mr. Latta alone was on any paper signed for our benefit in securing the deferred payments on this property, and not the firm's.

377 X Q. Not the firm's name?

A. No.

378 X Q. Did not the firm individually and otherwise sign paper in aid of those dishonored notes?

A. If they did I have no knowledge of it.

379 X Q. When you returned from California or the Pacific coast, as you call it, to Washington, did you call upon the firm for this account, or did they send it to you without being invited to do so?

A. Mr. Hillyer and I called upon the firm and requested the accounts and we waited about a week before we got them after demanding an account.

380 X Q. That was after you came here, was it?

A. Yes, sir.

381 X Q. As a matter of fact, did not they send that account to you before you got here?

A. They did not.

382 X Q. What account did you call for; do you remember?

488 A. We designated no particular account, but we called for our accounts with the firm on account of this real estate.

383 X Q. The firm in 1878 had been long dissolved, had it not?

A. I believe I was informed that it was dissolved in December, 1876, but when Mr. Hillyer and I came here we called upon Kilbourn and Olmstead, who were then partners, and also upon Mr. Latta, who had retired from the firm, and demanded the accounts from them.

384 X Q. Will you be good enough to look at these two exhibits marked F and G, and then state whether those were not sent to you before you came from the Pacific slope to Washington, in 1878?

A. They were not.

385 X Q. Neither one nor the other of them?

A. Neither one.

386 X Q. I now show you Exhibit C. Was that sent to you before you left the Pacific coast in 1878?

A. It was not.

387 X Q. How long a time do you think it would take to make that account?

A. It was about a week after we came here and requested the rendering of accounts before we got this.

388 X Q. How long before?

A. I say about a week.

489 389 X Q. Well, it would take nearly a week to make that out, would it not, in an active real estate office?

A. I should think not. It was a simple matter of copying an account from the books. That account never was sent to me.

390 X Q. How did you get it?

A. I have no recollection of having seen it until 1878.

391 X Q. After having your mind refreshed by circumstances what do you now say about the two accounts, F & G, having been sent to the Pacific coast?

A. I have no knowledge or recollection of their having been sent to me.

392 X Q. Can you say that they were not sent?

A. I cannot.

393 X Q. They may have been received by your associate, Mr. Hillyer, may they not?

A. They may.

394 X Q. Soon after the financial crisis of the fall of 1873 the real estate market in Washington became a dead letter or a dead thing, did it not?

A. The real estate market here, as I was informed, was flat after the crisis of 1873.

395 X Q. About how long did that state of affairs continue?

A. I was absent from the city until the summer of 1878, and at that time there was some demand for real estate. Between 1873 and 1878 I was not here and have no personal knowledge of

490 the real estate market.

Adjourned until to-morrow, Oct. 21, at two o'clock, same place.

J. J. JOHNSON,
Examiner in Chancery.

THOMAS SUNDERLAND recalled.

Redirect examination by Mr. C. J. HILLYER:

1 Q. Have you examined your testimony since it has been written out by the short-hand reporter?

A. I have.

2 Q. Are there any corrections in that testimony which you wish to make?

A. There are. I wish to correct my deposition and have

491 the changes made to conform to the questions as they were answered by me on my examination, on the face of the deposition, as follows:

Instead of the word "have" in the answer to the eleventh direct interrogatory write "had."

In answer to the 84th interrogatory of my direct examination I wish to add the words "and Olmstead" at the end of the answer.

In the answer to the first cross-interrogatory I wish to amend by

saying that I am here temporarily and trying to dispose of real estate in which I am interested.

3 Q. Was your business ever that of a real estate operator?

A. Incidentally it has been.

4 Q. Have you ever bought any real estate since this that you bought in 1872 and 1873?

A. No, sir.

5 Q. Have you ever done anything else in reference to real estate since that time except to endeavor to sell that which you have already bought?

A. Since that time I have not done anything except that.

6 Q. When had you ever dealt in real estate as a business before that?

A. Never as a business. I dealt very considerably in real estate in Sacramento.

7 Q. How long ago was that?

A. Over twenty years ago.

492 8 Q. Well, proceed now with your correction of your testimony.

A. In answer to the ninth cross-interrogatory I wish to say "I think it was in April or the early part of May, 1872." In answer to the 13th cross-interrogatory I say, as I said before when I was cross-examined, that I was to furnish one-half the money, and I was to have a one-half interest, Mr. Stewart and Mr. Hillyer each one-fourth. In answer to the 26th interrogatory I wish to say that I may have spoken to Mr. Olmstead at or before the time of the engagement of the firm to buy this real estate. In answer to cross-interrogatory 34 and 35 and also in explanation of other answers in reference to our engagement of the firm of Kilbourn and Latta to purchase real estate that I individually and in company with either Mr. Hillyer or Mr. Stewart, and possibly both, had frequent talks and conversations with the firm of Kilbourn and Latta. Mr. Stewart, being then in the Senate, was not present at many of the conversations. Where the final conclusion of the employment to purchase and the terms upon which the firm were to purchase for us was made—whether in the front or rear office—I do not remember. We had frequent conversations in both rooms. Mr. Latta generally, I think, was found in the front office. In answer to cross-interroga-

493 tory No. 51 I wish to say in April or the early part of May, 1872. In my answer to the 80th cross-interrogatory I wish to add the words "as brokers" at the end of the answer. In the answer to the 89th cross-interrogatory I wish to add the words "it was in April or the early part of May." The answer to the cross-interrogatory No. 156 is not taken down in full. I wish to say, in answer to that interrogatory, that I do not remember that that subject was discussed. In answer to cross-interrogatory No. 178 I wish to say that I preserved all letters from the firm or from any member of the firm, except those advising me of what payments were to be made in the immediate future. That information was generally conveyed to me not in letters, but by telegrams.

9 Q. In reference to that explanation, I wish to ask you whether

or not you preserved all of the accounts of every character which were sent to you purporting to be accounts?

A. I never had any accounts sent to me, unless a letter advising me of certain payments in the future, to be made both for taxes, interest, and principal on deferred payments.

10 Q. Did you ever destroy any paper of any significance connected with this business?

A. I never did.

494 In answer to cross-interrogatory 188 I wish to say that I do not remember that the firm of Kilbourn and Latta acknowledged the receipt of all moneys sent them and of the disbursement of money. The answer to the 198th cross-interrogatory is not complete. The word "it" should be added. In my answer to cross-interrogatory No. 249 I wish to strike out the words "and charged," leaving the sentence to read "brokerage was to be charged to the party selling." To my answer to the 305th cross-interrogatory I wish to add "at that place." The reporter has evidently made a mistake in taking down my answer to cross-interrogatory No. 364. Instead of thirty thousand dollars my answer was and now is one hundred and thirty thousand dollars. In reference to my answer to cross-interrogatory No. 367 I desire to say that I either did not understand the question or I made a mistake in the answer. I wish to say that the amount of liabilities assumed by Mr. Latta was two or three thousand dollars less than one hundred and thirty thousand dollars. In answer to cross-interrogatory No. 374 I wish to say "I am" instead of "no."

11 Q. In speaking of the liability of Mr. Latta upon obligations for Sunderland and Hillyer what do you mean?

A. I mean where he signed notes, either as trustee or in his individual capacity, to secure deferred payments on real estate purchased for the complainants and Stewart.

495 12 Q. When Mr. Latta proposed or agreed to sign these notes as trustee do you know whether he supposed he was incurring any personal liability or not?

Mr. TOTTEN: I object to that question, because it is an improper question.

Q. (continuing:) I mean, of course, do you know from what he said?

Mr. TOTTEN: Well, that makes it no better. Mr. Latta is not a party, and we are not bound by his say-so.

Mr. HILLYER: Well, I think you are, but that is something we cannot settle here.

A. I think he said either before the purchase of any property or during the time that the firm were making purchases that by signing as trustee he did not consider himself personally liable. The first time that I ever heard him say anything about personal liability on a note signed as trustee was in the summer of 1878, when he told me that he had been advised by his attorney or attorneys that he was liable on the note signed as trustee.

13 Q. That was the first time you had ever heard anything about the liability of Mr. Latta on these notes?

A. The first time I had ever heard of it, either through him or any one else.

14 Q. When the accounts were given to you and Mr. Hill-
496 yer in 1878 and you discovered the charge with regard to care and management, you have stated that you complained of it to the members of the firm. State what was done by yourself and Mr. Hillyer in reference to it after that.

A. Mr. Hillyer and myself went together to the office of Judge Cox and gave him a memorandum of the charges for care and management of the property as we found them on the accounts rendered in the summer of 1878 and employed him to bring suit against the firm of Kilbourn and Latta. After Mr. Hillyer left here I went myself twice to Mr. Cox's office. I only saw him once alone, and I then instructed him to bring the suits at once. He was to call on Mr. Bull, who was then our agent, for costs and retainer. That is my recollection.

15 Q. When did you leave here in 1878?

A. I left in the latter part of September, 1878, I think.

16 Q. Did you leave here supposing that the suit would be brought against the firm?

A. I did.

17 Q. Do you know the reason why it was not brought at that time?

A. Only from what I heard afterwards.

THOS. SUNDERLAND.

Subscribed to before me this 19 of December, 1881.

J. J. JOHNSON, *Examiner.*

497 *Correction Made by Mr. Thomas Sunderland in His Testimony on the — Day of ——, A. D.* 1881.

Since I last testified I have examined the accounts received from Kilbourn and Latta, which at the time I testified were in the hands of Mr. Hillyer, and I find what purports to be an account current between Mr. Hillyer and myself and Kilbourn and Latta, and also two accounts between myself and the same firm. The first of my separate accounts is dated 28th of June, 1872, and relates to the purchase of a few lots. The other account is dated September 4th, 1873, and relates to the purchase of property and disbursements on the same. The account between the firm of Kilbourn and Latta and Hillyer and myself is also dated on the 4th of September, 1873, and is between May 1st, 1873, and September 4th, 1873, and shows the receipt and disbursement of a little over forty-one thousand dollars ($41,000.00). When I received those accounts I do not remember, but I think it is very possible they were sent to me when I was in Europe. These are the only accounts purporting to be accounts

current that I have discovered since I last testified, and the
498 only accounts that I ever received, except memoranda of payments to be made on deferred payments and taxes.

THOS. SUNDERLAND.

Subscribed to before me this 19th of December, 1871.

J. J. JOHNSON, *Examiner.*

Met, pursuant to adjournment, at the time and place stated in said adjournment.

Present: Mr. C. J. Hillyer and Mr. J. H. Ralston, for the complainants, and Mr. Enoch Totten, for the defendants.

JOHN BULL sworn and examined:

Direct examination, by Mr. C. J. HILLYER:

1 Q. Where do you reside?

A. In Washington.

2 Q. How long have you resided here?

499 A. Well, I have been here steadily since the first of January, 1876, or about that time.

3 Q. What was your occupation here in 1872?

A. I was, for a part of that year, in the employment of Kilbourn and Latta as their cashier.

4 Q. How long did you remain in the employment of that firm?

A. I think I was there until some time in the spring of 1876. I thought it was 1875 at first, but I believe now it was 1876.

5 Q. What were your duties in the course of that employment?

A. Well, I kept their books and had charge of their cash and all their title papers.

6 Q. Do you know of the property being purchased by Sutherland, Hillyer & Stewart during the year 1872?

A. There was a large amount of property purchased by Sunderland, Hillyer and Co. in that year.

7 Q. Were the account- kept by you—that is, the accounts of the firm of Kilbourn and Latta?

A. Yes; I kept the books.

8 Q. Have you access to those books now?

A. I have seen them within the last few minutes.

9 Q. Can you state, in reference to square 156, what commissions were paid and to whom in connection with the purchase and sale of that square?

500 Mr. TOTTEN: I object to that question. It has nothing to do with the question in controversy in this case unless the commissions were paid by you. We propose to let you and Mr. Bull look at any book or paper in this office relating to your business. We will not let you look at any account or book or paper relating to any other man's business—or, in other words, we do not propose to go into an investigation of the income of the firm of Kil-

bourn and Latta, and we decline to show you the books and papers for that purpose.

10 Q. Have you a memorandum, Mr. Bull, made from the books, showing how these commissions were paid?

A. I took off a memorandum.

11 Q. Please take the memorandum——

Mr. TOTTEN: We will not allow Mr. Bull to have a memorandum or the books for that purpose.

Mr. HILLYER: It is his own memorandum.

Mr. TOTTEN: We think it is ours.

12 Q. State, if you know from your own knowledge, who paid the commissions, if any were paid, to the firm of Kilbourn and Latta as brokers upon the sale made to Latta as trustee for Sunderland, Hillyer & Stewart of square 115.

The WITNESS (interrupting): You mean square 156.

501 13 Q. No; I now change the question to square 115.

A. I can answer it by referring to the books.

14 Q. Do you know, independently of your own recollection, who paid them?

A. I know what entries are made on the books with reference to that transaction.

15 Q. State them.

Mr. TOTTEN: I object to the question for the same reason.

A. There was a commission of one thousand dollars ($1,000) paid to — by the Institution for the Education of Colored Youths.

16 Q. Do you mean paid to them?

A. No; I mean paid by them and charged to them.

17 Q. Paid by them and charged to whom?

A. The firm of Kilbourn and Latta, brokers, when they settled their accounts with that institution, charged that one thousand dollars' ($1,000) commissions.

18 Q. Do you know whether commissions were charged by the firm on square 156?

Objected to by Mr. Totten, counsel for the defendants, for the same reason.

A. Yes; there were commission sellers in that case.

19 Q. To whom? Do you remember the name of the seller?

A. My recollection is that it was Hallett Kilbourn,

502 trustee.

20 Q. Do you know whether commissions were charged on the sale of lot 17, in square 158?

A. I do not think there was any commission charged in that case.

21 Q. Are you able to state that positively?

A. I noticed when I was looking over the books that the entries of that transaction—the sale to the firm of Sunderland, Hillyer & Co.—there was no commission charged at all. That transaction was separate from the transaction in which the property was ac-

quired. The property was acquired beforehand from Governor Morgan.

22 Q. Was there a commission charged in that case?

A. I did not find an entry of it. I did not look thoroughly and do not know whether there was a commission charged to Governor Morgan or not.

23 Q. I ask you, now, to look at the books before you and see whether there were commissions charged to Mr. Morgan.

Mr. TOTTEN: I object to the witness looking at the books for that purpose. We will not produce the books in regard to the accounts of other people. They are private.

24 Q. Are you able to state without the books in regard to
503 the other property purchased by Sunderland, Hillyer, and Stewart?

A. I ran through the books and saw that commissions were charged to the sellers, except in such cases as the title came from Kilbourn and Latta and Olmstead themselves and in this case of lot 17. All the other cases, I believe, where the sales were made by the parties themselves to Sunderland, Hillyer & Co., commissions were charged.

Mr. TOTTEN: I object to all that for the same reason, and I object for the further reason that Mr. Bull seems to be testifying not from his own memory, but from what he has seen from the books.

The WITNESS: That is all I am testifying from—from the books.

25 Q. Can you state from memory what commissions were charged and to whom without the books?

A. I could not.

26 Q. Did you make a memorandum as to these commissions this morning?

A. I did.

27 Q. What did you do with it?

A. I left it on the desk in the other room.

28 Q. Will you produce it?

A. I undertook to produce it, but Mr. Olmstead had it and declined to give it to me.

29 Q. Did you give it to Mr. Olmstead?

A. No, sir; not particularly. I left it on his desk.

504 30 Q. What do you know of the purchase of lot 17, in square 158?

A. I was not cognizant of the negotiations by which that square was acquired at all. After the agreement had been made Mr. Latta came to me and asked me if I had any judgments against me. I told him no, and he asked me if I would consent to take the title to that lot, and convey it again. I told him I would, provided I conveyed by deed of special warranty and not of general warranty.

Mr. TOTTEN: Conversations with Mr. Latta are objected to because he is not a party to this suit.

31 Q. Is that all you know in reference to it?

A. I took the title to that property. It was a deed made to me by E. D. Morgan and wife.

32 Q. State all you know about it.

A. Then I made a deed of it to James M. Latta, trustee. It was a deed signed by myself and my wife.

33 Q. Do you know anything more about it?

A. I recollect the difference in the considerations.

34 Q. What was the difference?

A. I think it was about three thousand three hundred and sixteen dollars ($3,316), or somewhere near that. One was five thousand dollars ($5,000) and the other was eight thousand three hundred and sixteen dollars ($8,316).

505 35 Q. You mean by that the difference in the consideration named in the deed from Morgan to you and the consideration named in the deed from you to Latta?

A. Yes, sir.

36 Q. Did you have any interest in this transaction?

A. Not at all.

37 Q. Did you make anything out of it?

A. Not a cent.

38 Q. Did you know any reason why this was done—why you were asked to take the deed?

A. No; it was not explained to me and I do not know.

39 Q. How did you come to put the consideration in the deed of eight thousand three hundred and sixteen dollars ($8,316)?

A. I did as I was directed about it.

40 Q. By whom?

A. I do not remember.

41 Q. Was it by some member of the firm?

A. Yes, sir; it was some member of the firm.

42 Q. What did you know of the relations between the firm of Kilbourn and Latta and Sunderland, Hillyer & Stewart in the making of these purchases?

A. I never had any cognizance whatever of the negotiations for the purchase of this property at the time the purchases were
506 agreed upon between the seller and this firm of brokers. I never was cognizant of their transactions. The first I knew of these transactions was when they came to be entered upon the books. The firm of Sunderland, Hillyer & Co., either one member or the other of it, furnished the money as it was required, and generally the payments were made out of their money that they furnished. They were in frequent communication with the firm. I used to see them after having conferences with the several members of the firm. The relations between them seemed to be very confidential. They paid in money to the firm generally when it was called for, and did not take any account or cognizance of its disbursement at the time. I don't know that I know anything further about the relations existing between Sunderland, Hillyer & Co. and the firm of Kilbourn & Latta.

43 Q. Do you know whether Kilbourn & Latta and Olmstead were the brokers of Sunderland, Hillyer & Co. or not?

Mr. TOTTEN: I object to the question because it calls for a legal opinion.

Question (continuing). Whether they acted as such?

A. Well, I supposed that they were the brokers of Sunderland & Hillyer.

507 44 Q. State your reasons for so supposing.

A. Nothing, except from a general knowledge of their business. Money was put into the hands of this firm and they were directed to buy property, and they went on and did buy property. I have always understood from the firm that the commissions would be paid by the sellers of the property; but where the sellers were unwilling to pay a commission, then the firm of Sunderland, Hillyer & Co. were to pay the commissions.

45 Q. Did you ever know of the firms selling any property to Sunderland, Hillyer & Stewart? Did you at the time?

A. No.

46 Q. Did you ever know of their being interested as sellers of property to Sunderland, Hillyer & Stewart?

A. I never knew it at all until that transaction in regard to lot 17; then I thought they had an interest in that transaction where the title passed through me.

47 Q. What made you think they had an interest in that?

A. Because I saw the consideration in the deed to me was one figure and the consideration in the deed to Latta was another.

48 Q. Did you ask any questions?

A. No.

508 49 Q. What you speak of was a mere suspicion of your own?

A. Merely my own suspicion.

50 Q. What care and management was there of this property purchased by the firm of Kilbourn & Latta during the year- 1872, 1873, 1875, & 1876?

A. Well, they had, after the property was purchased, to attend to the payment of the debts on it, or rather the incumbrances on it; they paid the interest and principal when it fell due; they paid the taxes, and there was a small, insignificant amount in rent collected. A few pieces of property bore a little rent, and they collected some few sums, small in amount, but besides that I do not know what they did.

51 Q. Who did this work?

A. Mr. Olmstead generally paid the taxes, I believe—always. I generally paid the incumbrances, principal and interest.

52 Q. You kept the accounts also, did you not?

A. Yes, sir.

53 Q. That was done entirely by you?

A. Yes. In regard to the payments, some of the firm would sign the checks and I would make the payments. I did it in the majority of instances, I believe.

509 54 Q. I see upon the account which is introduced in evidence a charge of fifty dollars ($50) for a real estate book—a

charge by Kilbourn and Latta against Sunderland & Hillyer for that book. Can you explain that charge?

A. Well, they were charged that for the extraordinary cost in getting that book—for the work in getting up that book.

55 Q. Was there any cost except the labor in making up the book?

A. I do not know exactly how it was divided, but there was a good deal of work in getting up the book and there were some very expensive maps, *et cetera*.

56 Q. Were they not charged separately for the maps?

A. No; it was all in one item.

57 Q. Do you know at whose request that book was made up?

A. No; I do not know at whose request it was.

58 Q. Who did the work in making that book?

A. I did the work, as far as the writing was concerned. I did not draw the maps nor bind the book. The book was bound by some bookbinder, and the maps in the book were procured from the man who made them first.

59 Q. Will you state from the books of Kilbourn and Latta, which are here produced, what the balance of the account of Sunderland and Hillyer was with the firm on the first day of January, 1873?

510 A. The balance of Sunderland, Hillyer & Co.'s account on the first day of January, 1873, was a credit balance of forty-two thousand two hundred & five dollars and seventy-four cents ($42,205.74).

60 Q. Did Mr. Sunderland also, during the years from 1872 up to 1876, have an account with the firm of Kilbourn & Latta?

A. Yes, sir.

61 Q. I want to know what the balance of the account of Mr. Thomas Sunderland was in his account with them on the same day.

A. There was a credit balance to Thomas Sunderland at the same time of three thousand seven hundred and fifty-four dollars and thirty-six cents ($3,754.36).

62 Q. Will you look at that account and verify your statement of the credit balance to the firm, and also does that appear as you state it?

A. No; I had made a mistake in footing up or got the wrong year. There was a debit balance to the firm of Sunderland & Hillyer on that day of four thousand nine hundred and forty-three dollars and ninety-seven cents ($4,943.97).

63 Q. Now, Mr. Bull, will you tell us what that balance on each account was on the first day of July, 1873? Did you strike a balance on that day in keeping your books?

511 A. The balance-sheet of the entire business of the firm was only made once a year. I can figure it up.

64 Q. Can you give us the balance at the end of each year on the first day of January, in the years 1874, 1875, and 1876, respectively?

A. The credit balance of Sunderland and Hillyer on the 31st of December, 1873, was three thousand eight hundred and twenty-seven dollars and sixty-six cents ($3,827.66).

65 Q. Now, tell us that of Thomas Sunderland individually.

A. The balance of Thomas Sunderland was a debit balance of three thousand and seven hundred & sixty-three dollars and one cent ($3,763.01) on that day.

66 Q. Now, will you take the 31st day of December, 1874?

A. The balance of the account of Sunderland & Hillyer on the 31st day of December, 1874, was a debit balance of two thousand three hundred and eighty-five dollars and forty cents ($2,385.40).

67 Q. Now, give us that of Thomas Sunderland.

A. The balance of Thomas Sunderland on the same day—December 31st, 1874—was a credit balance of seven thousand seven hundred and seventy-six dollars and ninety-three cents ($7,776.93).

68 Q. Now, take the 31st of December, 1875.

512 A. The balance of the account of Sunderland & Hillyer on the 31st of December, 1875 was a credit balance of two thousand eight hundred and nineteen dollars and seventy-three cents ($2,819.73), and the account of Thomas Sunderland on the same day—that is, the 31st of December, 1875—was a credit balance of five thousand and three dollars and thirty cents (5,003.30).

69 Q. Now, give us the balance on the 31st of December, 1876.

A. On the 31st of December, 1876, I did not keep the books.

70 Q. State from the balance-sheet which Mr. Olmstead furnishes to you what was the balance of the account of Sunderland & Hillyer on the 31st of December, 1876.

A. The balance of the account of Sunderland & Hillyer, according to this balance-sheet which I hold in my hand, was a credit balance of eighteen thousand one hundred and twenty-five dollars and eighty-four cents ($18,125.84). I have looked at the figures on the books, and they agree with that.

71 Q. Does the balance-sheet also show the account of Thomas Sunderland individually?

A. There does not seem to be any entry of Thomas Sunderland here. I do not see any balance for him.

513 72 Q. How was this money paid into the firm of Kilbourn & Latta, and how and by whom was it distributed as between the account of Sunderland, Hillyer & Stewart and that of Sunderland alone during these years?

A. Well, the amount of money received came from what Sunderland and Hillyer at various times and in various ways paid in. When they were here they sometimes gave a check on New York themselves, I believe, but generally when Mr. Sunderland was in San Francisco he was notified by telegraph that money would be wanted at a certain time, & he would generally send a telegram to his bankers, Messrs. Laidlaw & Co., and they would authorize Kilbourn & Latta to draw on them. The money usually came in that way. It was paid out indiscriminately on either account as might be necessary.

73 Q. Then the application of the money to the account of one or the other was made by Kilbourn & Latta?

A. Yes; entirely so. It did not follow that the money paid in by Sunderland was applied exclusively to his separate property, but, on

the contrary, it was applied on the property of either as the amount fell due, so that the accounts were really joint accounts.

74 Q. From your knowledge and from a recent exam-
514 ination which you have been asked to make can you state what notes or liabilities in respect to this property were overdue on the first day of January, 1877?

A. By "this property," you mean the property of Sunderland & Hillyer?

75 Q. Yes.

A. I have made such an examination.

76 Q. State the result of it.

A. I believe I have gone through all the accounts in reference to the property of Sunderland & Hillyer, and there was an overdue unpaid balance on square 66 of eleven thousand dollars ($11,000); there was an overdue unpaid balance of square 93 of ten thousand dollars ($10,000), and there was an unpaid overdue balance on square 195 of ten thousand dollars ($10,000). Those were the only amounts overdue and unpaid on the 1st of January, 1877, on the property of Sunderland, Hillyer & Co., to the best of my knowledge and belief.

77 Q. What of those obligations was Mr. Latta liable for, either individually or as trustee?

The question was objected to by Mr. Totten, counsel for the defendants, because it calls for a legal opinion.

A. He was liable for one only. That was the debt due on square 195 of ten thousand dollars ($10,000).

515 78 Q. That was the only note which was then overdue, made of executed by Mr. Latta, either as trustee or individually?

A. I think it was.

79 Q. What were the circumstances in regard to the payment of the note of ten thousand dollars ($10,000) due on square 195 at maturity?

A. I paid Mr. Riggs thirty thousand dollars ($30,000) of principal besides the interest up to that date, and Mr. Riggs at the time expressed a willingness to have the ten thousand dollars ($10,000) remain just as long as the parties saw fit to let it remain, provided the interest was paid.

Mr. Totten: I object to that answer because it is immaterial what Mr. Riggs said; it has nothing to do with this investigation.

Direct examination of John Bull continued by Mr. C. J. Hillyer.

Q. I wish you would look, Mr. Bull, at the exhibit marked "Exhibit A," state in whose handwriting it is, and what you know in reference to it.

516 A. It is an account of Sunderland, Hillyer & Co. rendered at the time that that firm closed its business with the firm of Kilbourn and Latta, with the transfer of the property to Sunderland & Hillyer. The date is the 27th day of June, 1872.

Q. In whose handwriting is it?

A. In mine.

Q. It was an account then rendered by Kilbourn & Latta to Sunderland, Hillyer & Stewart?

A. Yes, sir.

Q. Now, I wish you would look at this paper marked "Exhibit B" and see in whose handwriting it is.

A. It is my handwriting except the signature & date, which are in James M. Latta's own handwriting.

Q. State what it is.

A. It is an account of the cash payments made on the several purchases by Sunderland and Hillyer.

Q. Is that also by Kilbourn & Latta to Sunderland, Hillyer & Stewart?

A. Yes; I should say it was.

Q. Now, I wish you would examine "Exhibit C," state what it is, and in whose handwriting it is.

A. This purports to be an account current of Thomas Sunderland with the firm Kilbourn & Latta. It is in the handwriting of Mr. Olmstead.

Q. Will you look at "Exhibit D" and say in whose
517 handwriting it is and the date, and what you know about it?

A. This is an account current of Sunderland and Hillyer with Kilbourn and Latta between dates of June 26, '72, and December 30, '76. It is in my own handwriting.

Q. Is it the transcript from the books of the firm of Kilbourn and Latta?

A. Well, I should think it was, although I am not sure I made it from the books. This was a thing that was made after I left the office.

Q. Did you make it at the request of Kilbourn and Latta?

A. My present impression is that I made it at the request of Mr. Olmstead.

Q. It was at the request of one of the firm, was it?

A. Yes, sir.

Q. Do you know when it was delivered to Sunderland, Hillyer and Co.?

A. I have no idea when it was. I have no idea about that.

Q. When was it made?

A. I have no idea when it was made or when it was delivered, except it must have been subsequent to the 30th of September, 1876.

Q. Now, will you look at "Exhibit E" and say what it is?

518 A. This is an account current of Sunderland and Hillyer with James M. Latta, trustee.

Q. In whose handwriting is it?

A. In my handwriting.

Q. What is the date of it?

A. It does not seem to have any date. The last entry is *in* June 20, '78.

Q. It must have been after that, then?

A. Yes; it was made by data furnished me by the firm?
Q. And delivered to Sunderland and Hillyer?
A. It was left with me, and I presume I gave it to Sunderland and Hillyer.
Q. That was the purpose for which it was made?
A. Yes, sir.
Q. Now look at "Exhibit F" and say what it is.
A. It purports to be an account of Sunderland and Hillyer with Kilbourn and Latta.
Q. In whose handwriting is it?
A. In Mr. Olmstead's handwriting.
Q. Do you know anything about the delivery of that?
A. I do not remember.
Q. Now, look at this paper marked "Exhibit G," state what it is, the date of it, and say in whose handwriting it is.
A. This purports to be an account of Sunderland and Hillyer with Kilbourn and Olmstead between the date of January 6,
519 '77, and June 1, '78. It is in the handwriting of Mr. Olmstead.

Cross-examination by Mr. TOTTEN:

Q. When did you first enter the service of Kilbourn and Latta?
A. Well, I think I first did some work for them in 1871, but I believe that I was not regularly engaged with them until 1872.
Q. What time in 1872?
A. I do not remember.
Q. Well, was it in May or October, in January or December?
A. I could not tell that without reference to the books.
Q. Did you write up their books after January, 1871?
A. My impression is that I wrote them for the entire year 1872.
Q. When did your connection with them terminate?
A. In 1875 or 1876; it was in 1875, I think.
Q. Do you remember the time in 1875? What month was it?
A. I do not remember exactly, but I think it was in the summer.
Q. In what business were Kilbourn and Latta engaged during your employment by them?
520 A. They were real estate brokers.
Q. What did they do as brokers?
A. Buy and sell real estate on commission.
Q. Did they buy and sell real estate on their own account?
A. They did.
Q. They had a separate account for these transactions, did they not?
A. They did.
Q. What was the title of that account?
A. That account was called the account of Kilbourn and Latta and Olmstead, reversing the order of the firm names.
Q. That was understood by you all to be a speculative account or an account showing their speculations in real estate?
A. Yes, sir.

Q. That account showed that a great deal of real estate was handled and involved much money, did it not?

A. Yes, sir.

Q. And large profits?

A. Yes; I think they made considerable profit on some of their transactions.

Q. Was it not a fact that the profits on their speculations exceeded the profits on their commissions and brokerage?

A. I could not tell that.

521 Q. What is your notion about it? Do you think they did or not?

A. I cannot give an idea on that subject; I don't know that I ever compared the two accounts for the purpose of settling that question. Their commissions were large and their profits were pretty large in some cases.

Q. You had a large balance from time to time, when you made balance-sheets to carry to the accounts of individuals?

A. I do not understand the question.

Q. Well, didn't you have a large balance on the profit side of that account to be credited to the individual members of the firm?

A. Oh, yes; there was usually at the end of every year a balance of the "K., L. & O." account to be credited to the individual members.

Q. It was a pretty large balance, was it not, for a few years, in all events?

A. Well, it was a considerable balance.

Q. In speaking about the "Exhibit A" just now, in your direct examination, you stated something about that question having been made when the affairs of Sunderland & Hillyer were closed up and when the property was transferred to Sunderland & Hillyer. What did you mean by that?

522 A. I meant that at the time they made a settlement with Stewart the others took the proportion of the property agreed upon.

Q. You did not — the settlement with Kilbourn and Latta?

A. No.

Q. In your direct examination a few days ago you stated that Sunderland and Hillyer furnished all the money required for this business. Did they furnish the money before the transactions were made or afterwards, or do you know?

A. They furnished money from time to time as it was wanted in the business.

Q. How do you know that?

A. I remember the fact that the money was furnished by them.

Q. How did you know what it was furnished for?

A. Well, I don't know except upon the general rule that they would not be apt to furnish money for any other purpose except their own.

Q. Well, what knowledge you have on that subject is derived from the books, is it not?

A. Yes.

Q. Altogether?

A. I don't remember hearing any of the firm of Sunderland & Hillyer saying what specific purpose they intended the money for.

Q. What was your business in the office of "Kilbourn & Olmstead?" What did you do?

523 A. I was called their cashier. I kept the cash account and the books.

Q. Did you keep their money?

A. Their money was kept in bank, but I kept control of the money in the vaults and safe.

Q. You have given balances to a considerable extent in your direct examination. Can you state whether those balances agree with the accounts current?

A. I have not made any comparison between those balances and the accounts current of late. When they were made I believe they were entirely correct. They were transcripts from the books of the firm, and must have shown the same balance as the books show. I don't remember any instance to the contrary.

Q. You have looked at the paper marked "Exhibit C," being an account current with Kilbourn and Latta between June 17th, 1872, and December 30th, 1876. It shows a debit balance of sixteen thousand two hundred and nine dollars and one cent ($16,209.01) Do you remember that fact?

A. No, sir.

Q. Will you look at the paper and tell whether it does or not, and whether those are your figures?

524 A. The footings of those accounts are in my handwritings, and the entry of the debit balances is also in my handwriting and shows $16,209.01.

Q. Now, won't you look at this exhibit, marked "Exhibit F," and state whether or not that continues an account and disposes of a balance?

A. This is an account made in the handwriting of Mr. Olmstead, and the balance is entered here at eighteen thousand one hundred and twenty-six dollars and eighty-four cents ($18,126.84).

Q. I have a sheet marked "Exhibit G." Please look at it and state what balance is taken up there and disposed of.

A. Well, I cannot tell you, sir.

Q. What does the paper say?

A. There are things ruled out here, and there is a balance in one place showing $15,344.41, and there must be added to that $415.15, making the apparent balance fifteen thousand seven hundred and fifty-nine dollars and fifty-six cents ($15,759 56).

Q. Won't you look at the entry on the credit side and see what that is?

A. That balance is $16,209.01.

Q. In whose handwriting is that?

A. Well, the figures seem to be in my handwriting both here and there (the witness indicating certain portions of the account). The balance of it is in Mr. Olmstead's handwriting. I re-

525 member that paper. I never was certain of its accuracy and am not now.

Q. Why not?

A. I cannot tell you at this time. I only know I could not understand it and never did and don't know whether it was right or not.

Q. Will you look at this paper again, marked "Exhibit C," and see what debit balance is there, and then state in whose handwriting the entry is on that paper?

A. The balance shown is in my handwriting.

Q. Well, is there any doubt about that being correct?

A. So far as the figures are concerned, it is correct.

Q. Well, did you have any doubt at the time it was made?

A. So far as the balances are concerned, they are correct in the footings-up of the figures in the account.

Q. Did not you verify it?

A. I believe I did go over it with Mr. Olmstead at the time.

Q. Is it right?

A. My impression is that it is right.

Q. Now, this paper (showing to witness "Exhibit G") takes up that balance?

526 A. It is right up to here (pointing to a certain portion of the account), but the rest of it I do not understand. I never did understand it & don't now.

JOHN BULL.

Subscribed and sworn to before me this 19th of December, 1881.

J. J. JOHNSON, *Examiner.*

GEORGE E. BAKER, a witness on behalf of complainan-, being duly sworn, upon oath testified as follows:

Direct examination by C. J. HILLYER:

1 Q. Give your full name.

A. George E. Baker.

2 Q. Where do you reside?

A. I reside in the city of Washington.

3 Q. How long have you resided here?

A. Twenty years or more.

4 Q. Do you know of a sale of a piece of property—square 115—in this city in the year 1872 by the Institution for the Education

527 of the Colored Youth?

A. Yes, sir.

5 Q. Were you a member of that association?

A. I was a member of the association and of the executive committee. I was its secretary and acted as treasurer. The real treasurer lived on Staten Island. He was a rich man by the name of Shaw. I simply reported to him from time to time, but all the actual business was done by me.

6 Q. Did you take any part in the negotiations for the sale of this property?

A. Yes, sir.

7 Q. Who were the person or persons who conducted the negotiations on the other side for the purchases?

A. Mr. Latta.

8 Q. How long were the negotiations pending before the bargain was closed?

A. Well, unfortunately the records of the association are locked up and the secretary is away, but is expected back every day and every hour, so I cannot speak except from remembrance and I have to be careful about that, but I do not think it was over two or three weeks, or it might have been months, but my impression is that it was not more than two or three weeks.

528 9 Q. It was closed up very shortly after negotiations were open, was it?

A. Yes.

10 Q. Did the firm of Kilbourn & Latta or Mr. Latta or any one else so far as you know have a refusal of this property at any time prior to the closing of these negotiations?

A. There, again, I cannot answer positively.

11 Q. Did you ever know of any such thing? You understand what I mean?

A. Yes; I can only say I think it very probable and almost possible. Mr. Latta accosted me somewhere on the street and said, Do your folks want to sell that property for $40,000 *dollars*? and it is barely possible that he said, Will you give us the refusal of it for a week or two? but I cannot say positively. It was so long ago and I cared so little about it. I was pleased with the offer, but I cannot say about any refusal. I do not know whether the minutes would show or not.

12 Q. Did you have any authority yourself to give a refusal of the property?

A. No.

13 Q. Was there ever any action of the managing board giving a refusal of the property to Mr. Latta?

529 A. I think not; when I get hold of the records I shall take the liberty of correcting this statement.

14 Q. Have you now any recollection of any such thing as a refusal which would be obligatory upon the company?

A. No; I do not think there was any.

15 Q. Did you ever hear anything of any such refusal prior to the time when these negotiations were opened by Mr. Latta, of which you have spoken?

A. No.

16 Q. If any such thing occurred it was during the period of those negotiations?

A. Yes.

17 Q. And, as I understood, you have no recollection of any such thing happening?

A. No; I have not.

18 Q. Do you think it possible that you could have undertaken by yourself to have given Mr. Latta a refusal for a certain time, which you would have represented to him to be obligatory upon the company?

A. Yes; I do think it possible.

19 Q. Perhaps you do not understand my question.

A. Well, I reason it out. I do not recollect it. If he made the offer of forty thousand dollars ($40,000.00), I would have likely said,
"I will call a meeting of the board to take that matter into
530 consideration." He would have likely said, "Let us have the refusal."

20 Q. Then what you mean by that would have been something like what you have said—nothing more than that?

A. Nothing more than that.

21 Q. Nothing that would have been legally binding on you or him?

A. No.

22 Q. There was no consideration of any character whatever for such refusal?

A. No; if any such thing as giving a refusal of the property occurred at all it must have been very incidentally such, as his saying, "Give us the refusal," and my assenting; but even that I do not recollect. It is merely possible; that is all.

23 Q. What was the price obtained by the association for this property?

A. Forty thousand dollars, paid by note of thirty-two thousand dollars ($32,000.00) and cash eight thousand dollars ($8,000.00), less one thousand dollars ($1,000.00) commission and a few dollars for expenses.

24 Q. To whom was the commission paid?

A. When the check was given for the balance the commission was taken out. He simply gave me so much less.

531 25 Q. It was then paid to Mr. Latta?

A. Yes; he gave a check for that much less.

26 Q. Was it a part of the bargain at the time it was finally closed that this commission should be paid to Kilbourn and Latta?

A. Yes.

27 Q. And in pursuance of that agreement it was paid?

A. Yes; it was paid.

Cross-examination of GEORGE E. BAKER by Mr. TOTTEN:

1 X Q. Have you got these books in your custody, to which you refer in your direct examination?

A. You mean the records of the institution. I have those in my house.

2 X Q. Are you ready to produce them on a proper occasion?

A. Yes.

Mr. TOTTEN: Mr. Examiner, I want this deposition adjourned until there can be an opportunity to cross-examine the witness with the books.

532 Mr. HILLYER: I object to any postponement of this examination on account of those books. Those books can be got in the proper way if they are wanted.

The EXAMINER: I have no discretion in the matter.

Adjourned till Saturday, Nov. 12th, 1881, at 2 p. m.

J. J. JOHNSON,
Examiner in Chancery.

Met pursuant to adjournment at time and place named in said adjournment.

Present: J. C. Hillyer and J. A. Ralston, for complainants; Mr. Enoch Totten, for defendants.

Cross-examination of GEORGE E. BAKER by Mr. TOTTEN:

Q. Mr. Baker, since you were examined in chief have you come into possession of the book containing the record or proceedings of the association which you spoke about?

A. Yes.

Q. Have you got it in your possession now?

A. I have.

Q. Will you let me look at it? I want to see the entries about square 115.

A. Here it is (handing the book to Mr. Totten).

533 Q. Is this book you have now handed me a record of the business of the corporation?

A. Yes, sir.

Q. What office did you hold at the time in connection with this association?

A. I was secretary and acting treasurer.

Q. Is that corporation still in existence?

A. Yes.

Q. Is this an original book of entry?

A. Yes; in my own handwriting.

Q. Are you still secretary of this association?

A. No, sir; I am treasurer, not secretary.

Q. I wish to show you an entry, Mr. Baker, made apparently on the 10th of January. The language I find in the entry is: The executive committee was authorized to sell each portion of the real estate as the committee may deem advisable. I ask you whether that referred to this square 115, which we have been talking about?

A. It did; we had no other property.

Q. Who begun the negotiations for the purchase of that at that time?

A. Well, there was no beginning of negotiations, except by way of conversation.

Q. Were those conversations with Kilbourn or Latta or any member of that firm?

A. Yes.

534 Q. Which one?

A. Mr. Latta.

Q. I invite your attention to another entry in this book dated January 30th, '71. The entry I refer to is this: A proposition hav-

ing been made by Kilbourn and Latta to sell real estate of this institution, payable in bonds of the Seneca Stone Company, and a committee consisting of Messrs. Blanchard, Langston, and Johnson was appointed and reported," etc. Was that entry made in relation to this identical piece of property also?

A. Yes.

Q. Now, will you turn further ahead and state to the examiner what disposition was made of that property which I have just now brought to your attention?

A. Mr. Blanchard, from the committee on the sale of the real estate of this institution, reported adversely, and the report of the committee was adopted and the sale considered inadvisable on account of increasing value of the property.

Q. Now, from your book and the entries therein contained, when was the next negotiation with Kilbourn and Latta about this property and what is the entry?

535 A. This was February 7, '71, which I have just read. The next entry was July 5, '71. Mr. Blanchard, from the same committee, reported adversely upon that and the offer was declined.

Q. That offer was made by whom?

A. That does not appear.

Q. Do you remember the facts as to the persons who made that offer? Was it Kilbourn & Latta? You may give me your best recollection.

A. I do not think it was from the fact of 7 per cent. being mentioned. Mr. Latta told me that 6 per cent. was their standard; that they would not give over 6 per cent.

Q. Do you remember if any other person ever made an offer for that square of ground?

A. I am trying to think whether they did or not; I cannot think of any one just now.

Q. Do you remember, Mr. Baker, of a conversation which took place between you on one side, representing this association, and Mr. Latta and Mr. Olmstead on the other side, in Mr. Latta's residence on 13th street above "L," where they made that identical proposition which is recorded in & by that entry?

A. No, sir; I cannot remember it, but I do not remember to the contrary; it may have been.

536 Q. Do you remember, Mr. Baker, that Mr. Latta and Mr. Olmsted frequently had conferences with you and with other members of the association about that time in regard to this property?

A. Yes; they did.

Q. They were pursuing that property with some considerable diligence and anxiety?

A. It seem- so, looking back at it now. It did not occur to me at the time.

Q. The real estate market at the time was quite busy and active?

A. I do not remember about that.

Q. I speak of the year 1871.

A. Yes; it was in 1871.

Q. Property was very active at that time and real estate advancing in value, was it not?

A. Yes.

Q. Will you turn to the next entry in your book about this square and state to the examiner what it is?

A. On February 1st, 1872, the matter of the sale of the real estate was discussed and, an offer of $40,000 being submitted, Messrs. Blanchard, Langston, and Johnson were appointed a committee to consider the sale of the real estate and report at a future meeting.

Q. Now, what was the result of that committee's action?

A. They submitted a report in favor of selling the property
537 of the institution known as square 115 at the price and terms offered by Kilbourn and Latta, namely, $40,000, payable $8,000 in cash and notes for the balance, secured by trust deed, at 6 per cent. interest, payable annually.

Q. You have just read the entry in the book?

A. Yes, sir.

Q. Was that sale consummated as a matter of fact?

A. Yes.

Q. And the money was paid?

A. Yes.

Q. At the time this proposition was made, Mr. Baker, was there anything said about commissions?

A. I suppose that was a part of the bargain.

Q. What was the amount of commissions?

A. One thousand dollars.

Q. And that amount was actually paid?

A. Yes; it was deducted from the cash payment.

Q. Was there any infirmity in the title to this property which required correction?

A. I think there was.

Q. Do you know what Mr. Olmstead did, if anything, towards perfecting that title? I will refresh your memory by asking you if he did not go to New York to see some gentleman by the name of Tateam or Tatham or something like that.

A. I think he did.

538 Q. Did he succeed in clearing up the title?

A. My impression is that he did.

Q. Do you remember meeting Mr. Olmsted with members of your association or the board of directors, or whatever you may designate those gentlemen, at Mrs. Johnson's house, Twelfth street, in regard to the business of purchasing this property?

A. Yes; I remember it.

Q. Did you not frequently meet him there?

A. Not frequently.

Q. How often?

A. Not more than three times.

Q. How long before the sale was concluded was it that the first meeting was held?

A. Not a great while.

Q. Six months or a year?

A. No.

Q. Not so long as that?

A. No; in relation — the ($40,000) forty-thousand-dollar sale.

Q. I mean in relation to buying the property at any price or at any time.

A. There was not in regard to the forty-thousand-dollars ($40,000) sale, as I said, but the thirty-one-thousand-dollar ($31,000) offer has faded from my mind.

539 Q. But that was not the first offer, was it? Did he not make that offer, representing Kilbourn & Latta, in Mrs. Johnson's house on 12th street?

A. He might have repeated it, but it was made before that by Latta. I think he did repeat it in the presence of the committee.

Q. He was there for the purpose of meeting the committee?

A. Yes.

Q. Don't you remember that prior to that Mr. Kilbourn or some of the members of the firm offered you twenty-five thousand dollars ($25,000) some time before the conclusion of the sale?

A. I don't remember.

Redirect examination by Mr. HILLYER:

Q. What is the next entry to the one which you have read in reference to this property? The last which you read was the report of the committee advising the acceptance of an offer of forty thousand dollars ($40,000).

A. Yes.

540 Q. What is the next entry in the record in reference to that?

A. Declaring the *seal*—which was the proper entry to execute the sale.

Q. On what day?

A. May 21st, 1872.

Q. What is the next entry in the book?

A. The next entry is a memorandum of my own; it is not a part of the proceedings.

Q. State what it is.

A. I made a record as follows:

Account of Sale.

Received, James M. Latta, trustee, note, payable six years after date, May 25th, 1872, or before, secured by deed of trust, S. J. Bowen and J. M. Latta, trustees, at 6 p'r ct. interest, semi-annually			32,000
Cash		8,000	
Less commissions	1,000		
Stamps on new deed by Tatham, &c.	40		
Recording deed	2		
		1,042	
			6,958
Rec'd for policy of ins.			6
			38,964

Net proceeeds note	32,000
Cash	6,964
	38,964
Received	38,964
Commissions & expenses	1,036
	$40,000

541 Q. What is the date of that?

A. There is no date to it.

Q. It must have been after May 21, '72, must it not, from the fact of its mentioning the date of the note as May 25th? Your memorandum says you received notes dated May 25th. The date of the memorandum must have been later than that?

A. Yes, sir.

Q. Did you give the exact language of the record in regard to the offer of $30,000—the first one that was made?

A. The executive committee was authorized to sell such portion of the real estate——

Q. I do not mean that; I mean the one where there was an offer made by Kilbourn & Latta, I think it was before that, in reference to the $30,000 offer?

A. "A proposition having been made by Messrs. Kilbourn & Latta to sell the real estate of this institution for $30,000, payable in bonds of the Seneca Stone Company, a committee was composed of Messrs. Blanchard and Bowen to confer with Messrs. Kilbourn and Latta and report to a future meeting as to the price offered, the value of the securities," etc.

Q. What is the date of the entry which you have just now read?

542 A. January 30, '71.

Q. What is the date of the entry when the sale was authorized?

A. May 15, '72.

Recross-examination by Mr. TOTTEN:

Q. That proposition which was made by Kilbourn and Latta, and which was accepted, was an offer by them to purchase that property out and out on those terms, was it not?

A. Yes, sir.

Q. There was nothing said about their being the agents or attorneys or brokers for anybody else, was there?

A. Well, I somehow got the impression that they were.

Q. Do you know how; was it solely from the fact they insisted upon commissions?

A. That was one reason. The fact that they were real estate brokers was another. I did not know that they were buying for themselves.

Q. They were doing an extensive business as real estate brokers, were they not?

A. Yes, sir.

543 GEORGE E. BAKER.

Subscribed to on this 19th of Dec., 1881.

J. J. JOHNSON, *Examiner.*

JOHN F. OLMSTEAD sworn and examined.

By Mr. C. J. HILLYER:

1 Q. Please give your full name.

A. John F. Olmstead.

2 Q. Have you in your possession the books of the firm of Kilbourn and Latta showing the accounts between that firm and Sunderland, Hillyer and Stewart in the year 1872?

A. I have.

3 Q. Do the books containing those accounts show, in reference to each of the purchases of property made by them, an entry upon the books of the firm of Kilbourn and Latta what commissions were paid by the parties making the deeds to Latta as trustee and to whom paid?

A. The books show all the accounts with every individual with whom we had business from the year 1871 up to the

544 year 1876.

4 Q. Do you understand the question which I asked you?

A. Well, I do not exactly.

Mr. HILLYER (to the reporter): Please read the question over to the witness.

The question was read over to the witness, who then answered as follows:

A. I think they do. I think I can safely say that they show that.

5 Q. Will you examine your books and state, in reference to square 115, what commissions, if any, were paid by the Institution for the Education of Colored Youths to the firm of Kilbourn and Latta and at what time paid?

A. I must respectfully decline to show in this controversy anything appertaining to the private business of parties not connected with this suit.

6 Q. Do you decline to show this?

A. I decline to show anything in the accounts of the firm of Kilbourn and Latta in which the parties to this suit are not interested.

7 Q. Do you know, of your own knowledge, whether that association paid commissions to the firm of Kilbourn and Latta?

545 A. On account of the lapse of time I should not like to state. I would add to that that I have voluntarily produced papers not called for and not known to be in existence by the complainants in this suit, and am willing to show them every book and every paper in my possession, and I will state that I have produced

everything connected with the old firm of Kilbourn and Latta that is pertinent in any manner to this case.

8 Q. You decline, as I understand it, to do this because you do not consider the testimony pertinent to this case?

A. I decline to produce the accounts of other individuals than those connected with this case. They are private and sacred in their nature.

JOHN F. OLMSTEAD.

Subscribed and sworn to before me—

J. J. JOHNSON, *Examiner.*

Counsel for complainants here offered in evidence certain papers, marked, respectively, Exhibits I, J, and K, and asked that the same be filed.

Met, pursuant to adjournment, at the time and place named in said adjournment.

546 Present: Mr. C. J. Hillyer and Mr. J. H. Ralston, for the complainants.

Deposition of Sayles J. Bowen in Behalf of Complainants.

Direct examination by Mr. C. J. HILLYER:

1 Q. What is your full name?

A. Sayles J. Bowen.

2 Q. Were you one of the commissioners or directors of a corporation known as the Institution for the Education of Colored Youth in the year 1872?

A. I was a member of the executive *S. J. Bowen* committee.

3 Q. Do you know of a sale being made by that company in the year 1872 of square No. 115, in this city?

A. I was not present when the sale was effected, but I know it by reason of the books and papers of the board and by conversing with other members of the board and by the action of the board subsequently. I was not present at the meeting of the board when

547 the bargain was made.

4 Q. You know the fact, however, that the bargain was made?

A. Yes.

5 Q. To whom was the sale made?

A. The acting person was Mr. James M. Latta.

6 Q. Do you remember to whom the deed was made?

A. It was made, if I recollect, to him as trustee.

7 Q. Did you know at the time for whom he was trustee?

A. I did not. I did not know the names of the individuals for whom he was acting.

8 Q. What was the price paid to the association for the property?

A. The price agreed upon was forty thousand dollars ($40,000.00).

9 Q. Were there any commissions paid by the association to the firm of Kilbourn and Latta?

A. I understand there was a commission of a thousand dollars allowed them for their action. Mr. Baker, however, was then act-

ing treasurer of the institution and knew better than I the details of the transaction.

10 Q. About how long were the negotiations pending for the purchase of this property at that time?

548 A. I don't know that I could state exactly, but I should think as long, perhaps, as six weeks or two months; perhaps longer. I would not pretend to be positive about it, but it was a considerable length of time. I know from the time the proposition was made to purchase the square until it was finally disposed of.

11 Q. Do you remember how much time elapsed between the actual proposition to buy the property and the time when the negotiations were closed?

A. Do you mean the proposition to pay $40,000?

12 Q. Yes.

A. No, sir; I do not know the exact length of time. I merely know this: A proposition was made and submitted to the board at a meeting, and it was rejected; at a subsequent meeting called, I do not know how long afterwards, the same proposition was accepted and the property was sold.

13 Q. Did the firm of Kilbourn and Latta or Mr. Latta or any one else have at any time a refusal of the property at a certain price?

A. Not to my knowledge. Quite the contrary.

14 Q. If such had been the fact would you have known it?

549 A. Well, I suppose so. I do not imagine there was any one competent to make a proposition of that kind to Kilbourn & Latta or any one else to accept an offer or to hold it in abeyance unless it was at a meeting of the board.

15 Q. Did you ever hear or know of any such thing?

A. I never did.

16 Q. At the time when this offer was made and up to the time when it was accepted by the association, had a higher price been offered by any one else for the property, would the institution — been able to have accepted it?

A. I should think not without a formal meeting of the board.

17 Q. But I mean that when a formal meeting of the board was held until the final acceptance of this offer which was made through Mr. Latta were they under any obligation to sell the property to him or to any one else?

A. Not that I know of—certainly not.

18 Q. During the short time of the negotiations about this property did you have any conversation with Mr. Latta, of the firm of Kilbourn & Latta?

A. I had several conversations with him.

19 Q. Where did they occur, and in what way?

550 A. Well, most of them were at my residence. Mr. Latta called there on several occasions to try and induce me to waive my objection to the sale of the property at $40,000. I never consented to it, and told him that I never would.

20 Q. In those conversations or any of them did Mr. Latta represent to you that he was acting for himself or the firm of Kilbourn and Latta or for any others in the purchase?

A. Well, I don't know as I could say that he did during these conversations, but at different times I had raised the question in regard to Mr. Latta's position—he signing a deed as trustee, not designating for whom he was acting or anything of the kind. I thought it was a rather queer way of doing business, and I wanted to know what authority he had and whom he represented. I asked him on more than one occasion, and he represented to me that he was not acting for himself, but for persons in the West, and I said in regard to the deed of trust that I was one of the trustees named in a deed of trust, and we were about advertising the property for sale under the trust deed. I raised the question there, I think in Bull's office, as to his authority to act in the matter and as to whether a deed
551 signed by him as trustee, without specifying for whom he was acting and having no allusion to the persons whom he represented, would be binding upon the real parties, and he made use of this expression: That a contract or paper had been executed and was recorded in the office of the recorder of deeds that showed for whom he was acting, and that he had full power and authority to act for those persons. I felt satisfied that Mr. Latta was correct. He represented the facts to me as a lawyer, and I took his word for it. I never went to the recorder's office to see whether there was anything there on record or not, but took his word for the truth of his declaration.

Adjourned.

J. J. JOHNSON,
Examiner in Chancery.

Met, pursuant to adjournment, at the office of Messrs. Hillyer and Ralston, on Thursday, at 2 o'clock p. m.

Present: Mr. C. J. Hillyer and Mr. J. H. Ralston, for the complainants, and Mr. Enoch Totten, for the defendants.

552 Cross-examination of SAYLES J. BOWEN by Mr. TOTTEN:

1 X Q. What was this association that you speak of in your direct examination?

A. An association chartered by Congress.

2 X Q. By Congress?

A. Yes, sir.

3 X Q. About what time?

A. Well, I should say, perhaps, in 1863; an institution for the education of colored youth; I think that is the way it reads in the title of the act.

4 X Q. You speak in your direct examination, on pages 7 and 8, of a conversation with Mr. Latta about advertising the property for sale under the trust deed. Will you state when that was?

A. Well, I should say it was something like three years ago.

5 X Q. The time when you were pressing for payment of deferred notes?

A. Yes, sir.

6 X Q. You do not seem to know much personally about this

transaction. Did you have anything to do with it individually?

553 A. No, sir; I had nothing to do with it individually.

7 X Q. And most of the information you have about it is from what appears on the books of the association?

A. And from conversations with Mr. Latta.

8 X Q. Anybody else?

A. Well, I have had conversation with the other members of the association with regard to it.

9 X Q. Will you state whether you had any conversation with Mr. Latta other than this conversation which you speak of three years ago?

A. Oh, yes; I had other conversations with him at my house. The conversation in regard to the sale took place at Mr. Bull's office, most of it. That relating to the purchase of this property took place in my house. Mr. Latta often came in there to talk about it.

10 X Q. Mr. Latta was your next-door neighbor, was he not?

A. His was the third house from mine.

11 X Q. It was in the same block?

A. Yes.

12 X Q. This was before the consummation of the sale?

A. Yes.

13 X Q. Do you know personally anything about this transaction?

554 A. I do not think I ever heard anything except from Mr. Latta and from members of the association.

14 X Q. And from the book?

A. I do not think I have ever seen any entry on the book relating to it; I do not think I have.

15 X Q. Do you know whether or not, prior to the time of your last negotiations with Mr. Latta, any proposition was made to buy that property for twenty-five thousand dollars ($25,000.00)? Say a year or two before the consummation of the sale.

A. I cannot tell the length of time before the proposition of forty thousand dollars was made, but there were propositions for a less amount made and rejected by the association.

16 X Q. Who made those propositions?

A. Mr. Latta, I conclude.

17 X Q. They were made by the firm of Kilbourn and Latta or somebody for them?

A. He always represented to me that he and Kilbourn were acting together.

18 X Q. Did you or any of your associates in this association ever have an interview with Mr. Olmstead?

A. I do not think I ever did; if I did I have no recollection of it.

19 X Q. Let me refresh your memory. Did you have such
555 a meeting at the home of Mrs. Johnson, on 12th St. between E and F?

A. That is where the meetings of the association were held.

20 X Q. Do you remember that Olmstead was there on one occasion or on two or three occasions?

A. No, sir; I do not.

21 X Q. Could you say that he was not there?

A. No, sir. I have no recollection of Olmstead's being there, but he may have been.

22 X Q. Well, the firm of Kilbourn and Latta had been making propositions and talking of buying this property for several months prior to 1872, the time the sale was finally consummated, had they not?

A. Yes.

23 X Q. It was plain to you they had that property in their eye and wanted to get hold of it?

A. Yes; it was plain they wanted to buy it.

24 X Q. It is also a fact, Mr. Bowen, is it not, that you were the man who was unwilling to sell it at the price they offered?

A. I resisted the sale to the end.

Redirect examination by Mr. HILLYER:

1 Q. Did they ever represent to you in any of these con-
556 versations that they wished to purchase this property for themselves?

A. No.

2 Q. They talked to you about it as brokers?

A. I understood they were acting for others. I had no conversation with Mr. Kilbourn respecting it—only with Mr. Latta.

Recross-examination by Mr. TOTTEN:

25 X Q. Did you have any conversation with Mr. Olmstead?

A. I have no recollection of any conversation with Mr. Olmstead concerning it. Perhaps my mind might be jogged in regard to it if Mr. Olmstead could tell me where and under what circumstances.

26 X Q. Go back as well as you can to the time the first negotiations were broached by this firm. Was there anything said at that time about the person for whom they were buying?

A. No, sir; they never mentioned the name of any one.

27 X Q. Did they say at the outset that they were buying for people other than themselves?

A. Mr. Latta told me they were not buying for themselves. I asked the question directly.

28 X Q. At the outset?

557 A. Before the bargain was consummated at my own house.

29 X Q. I am trying to get at this. I take it that your answer relates to the time of the negotiations resulting in the purchase. I want you to go back to the beginning of the negotiations between you and Kilbourn and Latta, and I want you, when you get back, to tell me whether anything was said at that time as to the persons or person for whom the purchase was to be made.

A. I do not recollect the time when the matter was first broached to me.

30 X Q. Well, the only time the statement was made to you by

Mr. Latta that they were purchasing for others was when the negotiations were first opened that resulted in the purchase. Is that so?

A. I think it was after the forty thousand dollars ($40,000.00) had been offered.

31 X Q. And after the board had accepted, contrary to your advice?

A. No; before that. I had no conversation with Latta after the offer had been accepted. I sent in my resignation immediately on the acceptance of this bid or offer—that is, I resigned as member of the board.

S. J. BOWEN.

Sworn and subscribed to before me—

J. J. JOHNSON,
Examiner in Chancery.

558 Met, pursuant to adjournment, at the time and place named in said adjournment.

Present: Mr. C. J. Hillyer, for the plaintiffs, and Mr. Enoch Totten, for the defendants.

Deposition of George Burgess on Behalf of the Plaintiffs.

Direct examination by Mr. C. J. HILLYER:

1 Q. Where do you reside?

A. In the city of Washington.

2 Q. Do you know square No. 155 in this city?

A. I do.

3 Q. Did you ever own that square either by yourself or in connection with anybody else?

A. Mr. James M. Orms and myself owned it in 1872.

4 Q. What time did you purchase it?

A. About the 24th of May in that year.

5 Q. What did you pay for it?

A. Sixty-four thousand five hundred and fifty dollars and sixty-five cents ($65,550.65).

6 Q. Did you afterwards sell it?

A. We did.

7 Q. To whom?

559 A. To Mr. Latta, of the firm of Kilbourn and Latta, as trustee.

8 Q. At what time?

A. About two weeks after we made the purchase.

9 Q. What did you get for it?

A. As near as I can recollect, we got three thousand one hundred dollars ($3,100.00), or three thousand dollars ($3,000) more than it cost us. I think there was one hundred dollars, or something like that, allowed for expenses.

10 Q. Do you know that that was about the amount?

A. Yes, sir.

11 Q. There could not have been more than one or two hundred dollars difference from that?

A. No, sir; I think not.

12 Q. With whom were the negotiations made at the time you sold the property?

A. Principally with Mr. Latta.

13 Q. In those negotiations did Mr. Latta represent that he was buying the property for himself or for other parties?

Objected to by Mr. Totten, counsel for the defendants, on the ground that Mr. Latta is not a party to this case.

A. I understood that he was buying for other parties.

560 Answer objected to by Mr. Totten because it is immaterial.

Mr. HILLYER: I will introduce this certified copy of a deed from Burgess and Orms to James M. Latta, and ask that the same be filed and marked "Exhibit H."

Cross-examination waived.

Adjourned till to-morrow (Oct. 20th) at 2.15 p. m. at the same place.

GEO. BURGESS.

Sworn and subscribed to before me—

J. J. JOHNSON, *Examiner.*

561 Copy.

Deed. George Burgess et al. to James M. Latta.

Recorded Oct. 2d, 1872, 3 p. m., Liber No. 697, folio 126, *et seq.*

[Stamps, $13.50.]

This indenture, made this seventh day of June, in the year of our Lord one thousand eight hundred and seventy-two, between George Burgess and Mary H. P. Burgess, his wife, and James M. Ormes and Mary W. Ormes, his wife, all of the city of Washington, in the District of Columbia, of the first part, and James M. Latta, trustee, of the same place, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of thirteen thousand one hundred dollars ($13,500), in lawful money of the United States, to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, and sell, alien, enfeoff, release, and convey, unto the said party of the second part, his heirs and assigns, forever the following-described real estate, situated in the city of Washington, District of Columbia, to wit: All of square numbered one hundred and fifty-five (155), as laid
562 down and platted in the plat of the said city of Washington, subject, however, to a certain deed of trust, bearing date the twenty-fourth (24th) day of May, eighteen hundred and seventy-two

(1872), made by the said parties of the first part to secure the payment of the sum of sixty-four thousand five hundred and fifty dollars and sixty-five cents ($64,550.65) and interest, which sum, with the interest thereon, the said party of the second part assumes and agrees to pay as part of the purchase-money of the premises hereby conveyed, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity or otherwise, however, of the said parties of the first part of, in, to, or out of the said piece or parcel of ground and premises:

To have and to hold the said piece or parcel of ground and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns, in and upon the trusts and for the purposes particularly set forth in a printed paper bearing
563 even date with these presents and signed and sealed by the said party of the second part, with full power, however, in the said party of the second part to sell and convey said property in fee simple or by way of mortgage or deed of trust to secure payment of money at such time and place, for such sums of money, upon such terms, and in such manner as in his judgment may be proper, without any liability on the part of the purchaser or mortgagee to see to the application of the purchase-money advanced on mortgage or deed of trust as aforesaid; and the said George Burgess and James M. Ormes, for themselves, their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, and their heirs shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs and assigns, forever from and against the claims of all persons — or to claim the same or any part thereof by, from, under, or through them, either or any of them, saving and excepting the deed of trust here-
564 inbefore mentioned; and, further, that they, the said parties of the first part, and their heirs shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or their counsel learned in the law shall advise, devise, or *or* require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

GEORGE BURGESS. [SEAL.]
MARY H. P. BURGESS. [SEAL.]
JAS. M. ORMES. [SEAL.]
MARY W. ORMES. [SEAL.]

Signed, sealed, and delivered in the presence of—
R. H. MARSH.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, R. H. Marsh, a notary public in and for the county afore-
565 said, in the said District, do hereby certify that George Burgess and Mary H. P. Burgess, his wife, and James M. Ormes and Mary W. Ormes, his wife, parties to a certain deed bearing date on the 7th day of June, A. D. 1872, and hereto annexed, personally appeared before me, in the District aforesaid, the said George Burgess and Mary H. P. Burgess, his wife, and James M. Ormes —, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Mary H. P. Burgess, wife of the said George Burgess, and Mary W. Ormes, wife of the said James M. Ormes, being by me examined privily and apart from their husbands and having the deed aforesaid fully explained to them, acknowledged the same to be their act and deed and declared that they had willingly signed, sealed, and delivered the same and that they wished not to retract it.

Given under my hand and notarial seal this seventh day of June, A. D. 1872.

[NOTARIAL SEAL] R. H. MARSH,
Notary Public.

566 Copy.

Deed. Edwin D. Morgan to John Bull.

Recorded June 6th, 1872, 11.30 a. m., Liber No. 681, folio 441 *et seq.*

[Stamps, $5.00.]

This indenture, made this twenty-third (23rd) day of May, in the year of our Lord one thousand eight hundred and seventy-two (1872), between Edwin D. Morgan and Eliza M. Morgan, his wife, of the city and State of New York, of the first part, and John Bull, of the District of Columbia, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of five thousand dollars ($5,000), in lawful money of the United States, to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, his heirs and assigns, forever the following-described real estate, situate in the city of Washington, District of Columbia, to wit: Lot numbered seventeen (17), in square numbered one hundred and fifty-eight (158), as laid down and platted in the
plat of the city of Washington, together with all the improve-
567 ments, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all

the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity or otherwise, however, of the said parties of the first part of, in, to, or out of the said piece or parcel of ground and premises:

To have and to hold the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs and assigns, subject to any assessments now a lien upon said property, and to his and their sole use, benefit, and behoof forever; and the said Edwin D. Morgan, for himself, his heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, their heirs, shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof by, from,
568 under, or through the said Edwin D. Morgan, his heirs or assigns; and, further, that they, the said parties of the first part, and their heirs shall and will, at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make and execute all such other deed or deeds or other assurances in law for the more certain and effectual conveyance of the said piece or parcel — ground and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or their counsel learned in the law shall advise, devise, or require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

E. D. MORGAN. [SEAL.]
ELIZA M. MORGAN. [SEAL.]

Signed, sealed, and delivered in the presence of—
EDWIN F. CAREY, JR.
D. F. MERRITT.

STATE OF NEW YORK, } ss:
City and County of New York, }

I, Edwin F. Carey, Junior, a notary public in and for the county aforesaid, in the said State of New York, do hereby cer-
569 tify that Edwin D. Morgan and Eliza M. Morgan, his wife, parties — a certain deed bearing date on the twenty-third (23d) day of May, A. D. 1872, and hereto annexed, personally appeared before me in the city & county aforesaid, the said Edwin D. Morgan and Eliza M. Morgan, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed, and the said Eliza M. Morgan, wife of the said Edwin D. Morgan, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed

and declared that she had willingly signed, sealed, and delivered the same and that she wished not to retract it.

Given under my hand and notarial seal this twenty-fifth (25th) day of May, A. D. 1872.

[NOTARIAL SEAL.] EDWIN F. CAREY, JR.,
Notary Public.

STATE OF NEW YORK, }
City & County of New York, } ss:

I, Charles E. Loew, clerk of the city and county of New York, and also clerk of the supreme court for the said city and county, the same being a court of record, do hereby certify that Edwin
570 F. Carey, Jr., whose name is subscribed to the certificate of the proof or acknowledgement of the annexed instrument and thereon written, was, at the time of taking such proof or acknowledgement, a notary public in and for the city and county of New York, dwelling in the said city, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary, and verily believe the signature to the said certificate of proof or acknowledgement is genuine. I further certify that said instrument is executed and acknowledged according to the law of the State of New York.

In testimony whereof I have hereunto set my hand and affixed the seal of the said court and county the 25 day of May, 1872.

[COURT SEAL.] CHAS. E. LOEW, *Clerk.*

[Stamp, 5c.]

571 Copy.

Deed. John Bull et ux. to James M. Latta.

Recorded Oct. 2d, 1872, 3 p. m., Liber No. 697, folio 143 *et seq.*

[Stamps, $8.50.]

This indenture, made this thirty-first day of May, in the year of our Lord one thousand eight hundred and seventy-two, between John Bull and Mary A. Bull, his wife, of the city of Washington, in the District of Columbia, of the first part, and James M. Latta, trustee, of the same place, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of eight thousand three hundred and sixteen dollars ($8,316) in lawful money of the United States to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, his heirs and assigns, forever the following real estate situate in the city of Washington, District of Columbia, to wit: Lot numbered seventeen (17), in square numbered one hundred and
572 fifty-eight (158), as laid down and platted in the plat of the city of Washington, together with all the improvements,

ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity or otherwise however, of the said parties of the first part of, into, or out of the piece or parcel of ground and premises:

To have and to hold the said piece or parcel of ground and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns, in and upon the trusts and for the purposes particularly set forth in a printed paper bearing even date with these presents and signed and sealed by the said party of the second part, with full power however, in the said party of the second part to sell and convey said property in fee simple or by way of mortgage or deed of trust to secure payment of money at such time and place, for such sums of money, upon such terms, and in such manner as in his judgment may be proper without any liability on the part of the purchaser or mortgagee to see to the appli-
573 cation of the purchase-money advanced on mortgage or deed of trust as aforesaid, subject to any assessments now a lien upon said property; and the said John Bull, for himself, his heirs, executors, administrators, does hereby covenant, promise, and agree to, and with the said parties of the second part, his heirs and assigns, that they, the said parties of the first part, and their heirs shall and will warrant and forever defend the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof by, from, under, or through the said John Bull, his heirs or assigns; and, further, that they, the said parties of the first part, and their heirs shall and will at any and all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make and execute all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said piece or parcel of ground and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or their counsel learned in the law
574 shall advise, devise, or require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

JOHN BULL. [SEAL.]
MARY A. BULL. [SEAL.]

Signed, sealed, and delivered in the presence of—
J. F. OLMSTEAD.

DISTRICT OF COLUMBIA,
County of Washington, } *ss*:

I, J. F. Olmstead, a notary public in and for the county aforesaid, in the said District, do hereby certify that John Bull and Mary A. Bull, his wife, parties to a certain deed bearing date of the (31st)

day of May, A. D. 1872, and hereto annexed, personally appeared before me, in the District aforesaid, the said John Bull and Mary A. Bull, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Mary A. Bull, wife of the said John Bull, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished
575 not to retract it.

Given under my hand and notarial seal this thirty-first day of May, A. D. 1872.

[NOTARIAL SEAL.] J. F. OLMSTEAD,
Notary Public.

575*a* [Endorsed:] Exhibit J. J. J. J. Fee, $1.75; said. This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 697, folio 143 *et seq.*, one of the land records for the District of Columbia. Washington, D. C., Oct. 19th, 1881. M. P. Schayer, recorder.

576 Copy.

Deed. The Institution for the Education of Colored Youth to James M. Latta.

Recorded Oct. 2d, 1872, 3 p. m., Liber No. 897, folio 125 *et seq.*

[Stamps, $40.00.]

This indenture, made the twenty-fifth day of May, in the year of our Lord eighteen hundred and seventy-two, by and between "The Institution for the Education of Colored Youth" of the District of Columbia, chartered by act of Congress approved March third, A. D. eighteen hundred and sixty-three, of the first part, and James M. Latta, trustee, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of forty thousand dollars ($40,000), lawful money of the United States of America, to it in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, his heirs and assigns, all that parcel of ground and premises situate and being in the said city of Washington, in said District of Columbia, and known
577 and distinguished upon the public plats and plans of said city as and being the whole of square numbered one hundred and fifteen (115) of the city of Washington, together with the buildings, improvements, privileges, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, and the remainder and remainders, and the reversion and reversions, rents, issues, and

profits thereof, and all the estate, right, title, and interest, both legal and equitable, of the said party of the first part therein and thereto; to have and to hold the said parcel of ground and premises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns, in and upon the trusts and for the purposes particularly set forth in a printed paper bearing even date with these presents and signed and sealed by the said party of the second part, with full power, however, in the said party of the second part to sell and convey said property in fee simple or by way of mortgage or deed of trust to secure payment of money at such time and place, for such sums of money, upon such terms, and in such manner as in his judgment may be proper without any liability on the part of the purchaser or mortgagee to see to the application of the purchase-money or money advanced on mortgage or deed of
578 trust as aforesaid; and the said party of the first part, for itself, its successors and assigns, doth hereby covenant to and with said party of the second part, his heirs and assigns, the above-described land and premises, with the appurtenances, unto said party of the second part to warrant and forever defend against all persons claiming the same or any part thereof; and, further, that any act or deed requisite and necessary the more perfectly to assure unto said party of the second part, his heirs and assigns, the said described land and premises above granted the said party of the first part and its successors shall and will at all times, at the cost of the person requesting the same, do, perform, execute, and deliver.

In testimony whereof the said Institution for the Education of Colored Youth hath caused these presents to be signed by its president, countersigned by its secretary, and its corporate seal to be affixed the day and year first hereinbefore written.

JOHN C. UNDERWOOD, *President.*

[Seal I. E. C. Y., 1863.]

Countersigned:

GEO. E. BAKER, *Secretary.*

579 DISTRICT OF COLUMBIA, *To wit:*

I, J. F. Olmstead, a notary public in and for the said District of Columbia, do hereby certify that John C. Underwood, president of the Institution for the Education of Colored Youth, personally appeared before me, in the District aforesaid, he being well known to me as the president of said corporation, which is a party to the foregoing deed, bearing date the 25th day of May, 1872, and then and there acknowledged the said deed to be the act and deed of "The Institution for the Education of Colored Youth" for the purposes therein expressed.

Given under my hand and notarial seal this 25th day of May, A. D. 1872.

[NOTARIAL SEAL.]

J. F. OLMSTEAD,
Notary Public.

[Endorsed:] Exhibit K. J. J. J. Fee, 1.50; said. This is to certify that the within is a true & verified copy of a deed as recorded in Liber No. 697, folio 125 *et seq.*, one of the land records for the District of Columbia. Washington, D. C., Oct. 19th, 1881. M. F. Schayer, dep. recorder.

580 DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

I, John J. Johnson, examiner in chancery, do hereby certify that, in pursuance of notice, the foregoing depositions — duly taken down and by me reduced to writing in the presence of and from the statement of the witnesses at the time and place designated in the caption thereof, and were by me read over to the witnesses and by them subscribed in my presence, the witnesses having been by me first duly sworn to testify the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for any of the parties to said cause or in any manner interested therein.

J. J. JOHNSON,
Examiner in Chancery.

DR. *Sunderland, Hillyer & Co. in Ac. with Kilbourn and Latta.* CR.

1872.					1872.				
May	25	To am't paid for exam'g title to lot 10, sq. 97		$10 00	May	18	By cash from T. Sunderland		$5,000 00
	"	To am't paid for exam'g title to lots 18 to 25, sq. 97		20 00		24	" do. " C. J. Hillyer		5,000 00
	27	To square 156, 328 sq. ft., @ 27½ cents per ft.; deed dated May 17, 1872, to James M. Latta, trustee		90,429 90		27	" incumbrance in sq. 156, assumed as follows, viz: $6,500 in 1 year, $6,500 in 2 years, and 7,000 in 3 yrs. from Oct. 2, 1871; int., 7%, pay'l- semi-annually; also $6,000 in 3 yrs., $13,000 in 4 yrs., and $13,000 in 5 years from Oct. 2, 1871; int., 7%, pay'l- annually	52,000 00	
	"	To stamp on deed of trust, same sq.		17 00			By accrued interest on the same from Oct. 2, 1871, less $910 already paid	1,405 76	
	"	To acknowledging same		50					53,405 76
	28	" lots 18 to 25, incl., sq. 97; deed dated May 27, 1872, to James M. Latta, trustee (these lots paid for in full)		4,039 70		"	By one note, dated May 17, 1872, and pay'l- in 1 yr.; int., 7%, pay'l- semi-annually (sq. 156)		17,000 00
	"	To stamp on deed, same lots		4 50		"	By cash from C. J. Hillyer		15,046 64
	29	" lot 10, sq. 97; deed dated May 25, '72, to James M. Latta, trustee		1,580 25		28	" do. " Wm. M. Stewart		20,000 00
	"	To stamp on deed of trust, same lot		1 50		29	" one note, dated May 25, '72, and pay'l- in 2 years; int., 6%, pay'l- annually		1,200 00
	"	To drawing & acknowledging deed of trust		5 50		30	By incumbrance on sq. 115, assumed as follows, viz: One note, dated May 25th, 1872, & payable *in* or before 2 yrs.; int., 6%, pay'l- semi-annually	32,000 00	
	30	To square 115; deed dated May 25, '72, to James M. Latta, trustee		56,000 00			Also two notes for $6,500 each,		
	"	To drawing & acknowl'g deed of trust, sq. 115		5 50					
	"	To am't paid for policy of ins., surrender value		6 00					
June	5	To am't paid for exam'g title to lot 17, sq. 158		15 00					

"	To lot 17, sq. 158, deed dated May 31, '72, to James M. Latta, trustee		8,316 00			dated May 30, 1872, & pay'l- in 1 & 2 years; int., 6%, pay'l- semi-annually	13,000 00	
6	To stamp on deed of trust, lot 17, sq. 158		4 00					45,000 00
"	To stamp on deed of trust, sq. 115		13 00	June	5	By cash from T. Sunderland		30,000 00
7	To stamp on deed of trust, p't lot 9, sq. 158		2 00	"		" one note (on lot 17, sq. 158), dated May 30, 1872, & pay'l- in 2 years; int., 6%, pay'l- semi-annually		4,000 00
"	To am't p'd for exam'g title to lot 8, sq. 158		15 00		8	By incumbrance on sq. 155, assumed as follows, viz: One note, dated May 24, '72, and pay'l- in 5 yrs.; int., 7%, payable semi-annually		54,550 65
"	To am't p'd for exam'g title to lot 3, sq. 158		15 00		11	By cash from T. Sunderland		20,000 00
"	To am't p'd for exam'g title to p't lot 9, sq. 158		15 00	"		" do. " Wm. M. Stewart		5,000 00
"	To am't p'd for exam'g title to sq. 155		25 00					
"	To drawing 2d deed of trust, sq. 156		5 00					
8	To square 155; deed dated May 24, '72, to James M. Latta, trustee		72,970 30					
11	To lots 27 to 49, incl., sq. 134; deed dated June 1, '72, to J. M. Latta, trustee		14,417 65					
"	To stamp on deed of trust, same lots		11 00					
	Amount carried forward		$256,944 30			Amount carried forward		$275,203 05
582								
1872.	Amount bro't forward		256,944 30	1872.		Amount bro't forward		275,203 05
June 11	To stamp on deed of trust, lots 11 to 25, sq. 195		40 00	June 11		By three notes (on lots 27 to 49, in sq. 134), dated June 1, 1872, for $3,500 each, and pay'l- in 1, 2, or 3 years; int., 6%, pay'l- annually		10,500 00
"	To drawing deed of trust & ack'g't, lots 11 to 25, sq. 195		5 50					
"	To drawing deed of trust & ack'g't, lots 27 to 49, sq. 134		5 50					
"	To am't p'd for exam'g title, lots 11 to 25, sq. 195		15 00		12	By one note (on lots 11 to 25, sq. 195), dated June 3, 1872,		

Exhibit "A"—Continued.

1872.				1872.			
June 12	To lots 11 to 25, sq. 195; deed dated June 3d, '72, to James M. Latta, in fee		$52,500 00		and pay'l- in 3 yrs.; int., 7%, payable semi-annually		$40,000 00
"	To all of sq. 151, excepting lots 1 to 16, incl., and 20, 21, 22, 25, & 26; deed dated June 4, 1872, to James M. Latta, tr.		23,864 75	June 12	By one note (on lots in sq. 151), dated June 4, 1872, and pay'l- in 5 yrs.; int., 6%, payable semi-annually		18,864 75
"	To drawing deed of trust & ack'g't, lots in sq. 151		5 50	14	By incumbrance on W. p't lot 9, sq. 158, assumed as follows, viz: Two notes, dated May 30, 1872, for $800 each, and pay'l- in 1 and 2 years; int., 6%, pay'l- with notes		1,600 00
"	To stamps on deed of trust, lots in sq. 151		19 00	"	By one note (on lot 10, sq. 158), dated May 9, 1872, and pay'l- in 3 yrs.; int. 6%, pay'l- semi-annually		2,500 00
14	To W. p't lot 9, sq. 158; deed dated June 14, 1872, to James M. Latta, trustee		2,836 00	15	By cash from T. Sunderland		4,500 00
"	To lot 10, sq. 158; deed dated June 14, '72, to James M. Latta, trustee		5,043 00	17	By incumbrance (on p't lot 21, sq. 158), assumed as follows, viz: Three notes of $258.31 each, dated Sept. 28, 1871, & pay'l- in 1, 2, & 3 yrs.; int. from March 28, '72, at 6%, pay'l- semi-annually		774 93
"	To drawing deed of trust & ack'g't, lot 9, sq. 158		6 00	"	By two notes (on lot 3, sq. 158), for $2,712 each, dated May 28, 1872, and pay'l- in 1 & 2 years; int., 6%, pay'l- annually		5,424 00
"	To stamp on deed of trust, lot 9, sq. 158		3 00	18	By two notes (on lots 3, 4, & 5, sq. 67), for $2,261.33 each, dated June 18, 1872, and pay'l- in 6 & 12 months; int., 6%, pay'l- with notes		4,522 66
15	To am't p'd for examining title, lot 10, sq. 158		30 00				
17	To W. 25 ft. of lot 21, sq. 158; deed dated June 11, 1872, to J. M. Latta, trustee		2,066 50				
"	To lot 3, sq. 158; deed dated May 28, '72, to James M. Latta, trustee		7,232 00				
"	To drawing & ack'g deed of trust, lot 3, sq. 158		5 50				
"	To stamp on deed of trust, lot 3, sq. 158		5 50				
18	To lots 3, 4, and 5, sq. 67; deed						

	dated June 18, '72, to J. M. Latta, trustee		6,784 00	19	By incumbrance on lot 8, sq. 158, assumed as follows, viz: Two notes of $1,000 each, both pay'l- in 2 yrs.; int., 6 %, pay'l- with notes		2,000 00
"	To am't p'd for exam'g title to lots 3, 4, & 5, sq. 67		15 00	24	By cash from Wm. M. Stewart		5,000 00
"	To commission on purchase of lots 3, 4, & 5, sq. 67		339 20				
"	To drawing & ack'g deed of trust, lots 3, 4, & 5, sq. 67		5 50				
"	To stamp on deed of trust, lots 3, 4, & 5, sq. 67		5 50				
19	To am't p'd for drawing deeds, lots 8, sq. 158		10 00				
"	To stamp on deed of trust, lot 8, sq. 158		2 00				
"	To lot 8, sq. 158; deed dated June 14, 1872, to James M. Latta, trustee		4,410 00				
	Am't carried forward		$362,197 75		Amount *bro't* forward		$370,889 39
1872.	583 Amount bro't forward		362,197 75		Amount bro't forward		370,889 39
June 26	To am't of cash payments on lots in sq'rs 92 & 68 credited to T. Sunderland		6,745 66				
"	To balance of % of Sunderland, Hillyer & Co. credited to Thomas Sunderland		1,945 98				
			$370,889 39				$370,889 39

By the transfer of lot 7 and subs. G, H, I, J, K, L, M, & N, in sq. 92; lot 3, in sq. 92, and lots 2, 3, 15, & 16, sq. 68, to Thomas Sunderland it leaves the gross amount of the purchases of Sunderland, Hillyer & Co., with the expenses thereon, $370,889.39, on which the cash payments have been $100,855, the nearest sum to $100,000 that is practicable. The account of Sunderland, Hillyer & Co. on our books is (by the transfer of lots in sqr. 92 & 68, and the balance of their ac. to Thomas Sunderland) balanced and closed. To adjust the small difference between the parties there should be paid by C. J. Hillyer to T. Sunderland $167.11, and by Wm. M. Stewart to T. Sunderland $213.75, making $380.86.

The respective parties will then own on joint account property the cash cost of which has been $100,855, as follows:

Thomas Sunderland	$50,427 50
C. J. Hillyer	25,213 75
Wm. M. Stewart	25,213 75
	$100,855 00

as above; which property is held by James M. Latta in trust for the parties and in the proportion above stated.

Washington city, D. C., 27th June, 1872.

JAMES M. LATTA.

584 & 585 "EXHIBIT B."

Amounts Paid in Cash on the Several Purchases of Sunderland, Hillyer & Co.

1872.		
—— 28.	Square 156	20,046 14
"	Lots 18 to 25, incl., square 97	4,064 20
29.	Lot 10, square 97	397 25
30.	Square 115	20,024 50
June 3.	Lot 7 & subs G, H, I, K, L, M, & N, square 92	3,584 70
5.	Lot 17, square 158	4,335 00
8.	Square 155	18,444 65
11.	Lots 27 to 49, incl., square 134	3,934 15
12.	" 2, 3, 15 & 16, square 68	1,651 96
"	" 11 to 25, incl., square 195	12,560 50
"	(Excepts lots — to 16 & 20, 21, 22, 25, 26), square 151	5,024 50
14.	W. p't lot 9, square 158	1,262 50
"	Lot 10, square 158	2,573 00
15.	P't lot 21, square 158	1,291 57
17.	Lot 3, square 158	1,834 00
18.	" 3, " 92	1,509 00

17. Lots 3, 4, & 5, square 67	2,626 04
19. Lot 8, square 158	2,437 00
	$107,600 66

The following (of the above) lots have been transferred to Thomas Sunderland, viz:

Lot 7 & subs G, H, I, K, L, M, & N, sq. 92	$3,584 70	
" 3, sq. 92	1,509 00	
Lots 2, 3, 15, & 16, sq. 68	1,651 96	
		6,745 66
Cash cost	$6,745 66	
Cash cost of lots remaining in S., H. & Co.		$100,855 00

JAMES M. LATTA.

Thomas Sunderland in Ac. Current with Kilbourn and Latta, June 17th, 1872, to December 30th, 1876.

1872.		586a			1872.			
June	17	To cash p'd for city plats		$25 00	June 26	By deferred payments on following:		
	26	For lots 7, G, H, I, K, L, M, N, sqr. 92	$10,628 10			Lots 7, G, H, I, K, L, M, & N, sqr. 92	$7,043 40	
		For lot 3, sqr. 92	5,009 00			Lot 3, sqr. 92	3,500 00	
		" 23, 15, & 16, sqr. 68	6,531 34			" 2, 3, 15, & 16, sqr. 68	4,879 38	
				22,168 44				
	28	" 2, sqr. 92		4,320 00		Balance of % S., H. & Co. transferred	1,945 48	
	"	To commissions & expenses on lot 2, sqr. 92		224 00		Am't cash payments, sq. 68 & 92	6,745 66	
								$24,113 92
July	1	To ex. title, lot 17, sqr. 69		20 00				
	"	" lot 17, sqr. 69		2,035 00	28	By 8 notes, $270 each, payable 1 year from June 27, '72, on lot 2, sq. 92		2,160 00
	"	" deed of trust, stamp, & ack't, same lot		6 50				
	30	To lot 16, sqr. 69		2,035 00	July 1	By 1 note of J. M. L., — 1 year fr. June 29, '72, on lot 17, sq. 69		1,000 00
	"	" ex. title above lot		20 00				
Aug.	3	" cash p'd 1st ins't on 200 shares Conn. Ave. & Park R. R. Co. stock		1,250 00	30	By encumbrance assumed on lot 16 (dated July 8, '72, pay'l- — 2 years), sq. 69		800 00
	5	To ack'em't deed trust, sqr. 138	50		31	By cash, rent rec'd from sq. 92		12 50
		To ack'em't deed trust, lots 12 & 8, sqr. 67	50		Aug. 1	" " " " 92		10 00
				1 00	"	By cash avails d'ft on Dees & Waller		25,000 00
	"	To p't 6, all 12, 13, 14, 15, & 19, sqr. 67		14,408 00	5	By 3 notes, $2,401.33 each, at 1, 2, & 3 years	7,203 99	
		To commissions, expenses, &c., above lots		776 90		By 3 notes, $800.44 each, at 1, 2, & 3 years, sq. 67	2,401 30	
	12	To all sqr. 138		26,500 00				9,605 34
	"	" ex. title, deed of trust, stamps, sq. 138		72 50	12	By 2 notes, 8,000 each, at 1 & 2 years		16,000 00
	30	To ex. title, lot 9, sqr. 97		25 00				
Sept.	9	" p't lot 9, sqr. 97		798 75	31	By cash rec'd, rent, sq. 92		10 00

"	" deed trust, stamp, & ack't, lot 9, sq. 97		6 00	
23	To cash, telegram San Francisco		6 65	
Oct. 2	To cash, recording 8 deeds		12 25	
5	" " taxes, '72, '73, p't 9, sq. 97	7 21		
	2, sq 92	22 04		
	7 & G to N, sq. 92	67 68		
	Sq. 138	216 35		
	2, 3, 15, 16, sq. 68	36 20		
	17, sq. 69	12 46		
			361 94	
23	To cash, taxes '72, '73, 16, sq. 69	12 46		
	6, 12, 13, 14, 15, & 19, sq. 67	81 90		
	3, sq. 92	34 00		
			128 36	
24	To cash, recording release, sq. 92		1 25	
	Am't carried for'd		$75,202 54	
	586½			
1872.	Am't bro't for'd		75,202 54	
Oct. 24	To cash p'd James Henning, 5 mo. int. on his note, $7,043.40, dated May 24, '72, surrendered; a new note, dated Oct. 23, '72, at 4 yrs. 7 mo., substituted, sq. 92		176 08	
Nov. 6	To cash, 2 deeds, p't lot 9, sq. 97		3 00	
27	To " 6 mo. int. on note, $4,879.39, sq. 68		170 78	
Dec. 6	To cash, express ch'g's		79 00	
1873.				
Jan'y 6	To M. Ashford, ex. title 9, 10, 11, 16, 17, sq. 67		20 00	
9	To lots 9, 10, 11, 16, & 17, sq. 67		13,997 10	
	" commissions, deed, & ack't, sq. 67		705 35	
25	To cash, recording deed, sq. 67		2 00	

Sept. 1	" " " "		10 00
9	" 1 note, H. K.'s, dated Sept. 4, '72, pay'l- 1 year, p't 9, sqr. 97		500 00
11	By cash, rent house, sqr. 67		5 00
30	" " rent, sqr. 92		10 00
Oct. 1	" " " " 92		10 00
	Am't carried for'd		$79,246 76
1872.	Am't bro't for'd		79,246 76
Nov. 1	By cash rec'd from rent, sq. 92		20 00
Dec. 2	" " " " " 92		10 00
17	" " freight returned		79 00
21	" " rec'd from rent, sq. 92		20 00
30	" " " " " "		10 00
1873.			
Jan'y 9	" 1 note, J. M. L.'s, sq. 67		9,000 00
10	" cash avails d'ft Lees & Waller		1,948 09
28	By cash overcharged recording deed		50
30	By cash avails d'ft Lees & Waller		2,683 50
31	By cash from rent, sqr. 92		10 00
Feb'y 1	" 2 notes, J. M. L.'s, $2,250 each, sq. 92		4,500 00

Exhibit C—Continued.

1873.					1873.				
Feb'y	1	To lot 1, sq. 92		$7,183 50	Feb'y 14	By 3 notes, J. M. L.'s, at 1, 2, 3 years, sqr. 176, 177			$2,729 73
	"	" ex. title, deed trust, & ack., sq. 92		15 50	15	By cash rec'd from T. Roesele & Son			1,800 00
	4	To cash p'd 6 mo. int., $2,401.35, sq. 67		72 04	Mar. 5	By cash rec'd from rent, sqr. 92			10 00
	5	To cash p'd 6 mo. int., $7,203.99, sq. 67		216 12	31	" " " " " " 92			10 00
	6	To cash p'd 6 mo. int., $16,000, sq. 138		560 00	April 4	By " " " H. H. Wills, collection from J. W. Johnson			1,000 00
	11	To cash p'd, recording deed, lot 1, sq. 92		1 50	5	By cash avails d'ft Lees & Wallis			1,982 49
	13	To Thos. Fitch, ex. title, S. 1, 2, 3, sq. 176	25 00		8	By cash from rent, sq. 92			20 00
		To Thos. Fitch, ex. title, S. E & F, sq. 177	25 00		28	By " check on Lees & Wallis			1,716 90
				50 00	30	By cash avails d'ft Lees & Wallis	21,997 80		
	14	To subs 1, 2, 3, sq. 176	}	3,639 65		By cash from rent, sq. 92	10 00		
	"	" " E & F, sq. 177	}						22,007 80
	"	To deed of trust, ack't, & recording		7 00	"	" incumbrance assumed on sq. 153, 2 notes—			
Mar.	27	To ex. title E. ½ 9, sq. 158		25 00		1 for $5,000, at 2 years	5,000 00		
April	5	" am't special assessment, lots 1, 3, & 4, sqr. 138		1,982 49		1 " 21,500, " 5 "	21,500 00		
	23	To cash p'd 6 mo. int., $7,043.40, sq. 92		211 30		Accrued interest	479 00		
	26	To cash p'd surveyor, sq. 138		7 50					26,979 00
	30	" all, sq. 153		48,976 80					
May	3	" cash, recording deed, sq. 153		2 00					
	5	" " p'd A. Cluss		400 00					
	14	" " " note, sq. 138	16,000 00						
		" " " int., " "	373 32						
				16,373 32					
	16	To " " recording release, sq. 138		1 25					

19	To expenses sale to Sir Ed. Thornton, deed, release, ack't, bond, & services		115 50	
	Am't carried for'd		$170,196 32	
587				
1873.	Am't bro't for'd		170,196 32	
May 24	To cash p'd telegram, California		3 25	
27	To " " 6 mo. int., $4,879.38, sq. 68		170 78	
"	To cash p'd John Fraser		600 00	
June 2	To " " 6 mo. int., $3,500, lot 3, sq. 92		210 00	
6	To ex. title, sq. 138		10 00	
30	To am't p'd last note & int., lot 17, sq. 69; prin., $1,000; int., $60	1,060 00		
	To 2 notes, lot 2, sq. 92; prin., $540; int., $32.66	572 66		
	To 2 notes, lot 2, sq. 92; prin., $540; int., $32.67	572 67		
	To 4 notes, lot 2, sq. 92; prin. & int., $1,145.36; notary fee, $4	1,149 36		
			3,354 69	
"	To deed, ack'm't, and recording release lot 17, sq. 69		6 75	
July 7	To cash adv.		1 60	
8	To " p'd 6 mo. int., $9,000, sq. 67		270 00	
14	To cash p'd 6 mo. int., $21,500, sq. 153		927 50	
24	To cash p'd 6 mo. int., $2,729,73, sqs. 176, 177		81 90	
Aug. 2	To cash p'd 1st note, $2,401.33, sq. 67; p'd 6 mo. int. on same, $72.04, sq. 67; p'd 6 mo. int. on 2d & 3d notes, $144.08, sq. 67		2,617 45	

May 19	By S. p't sqr. 138 sold Sir Ed. Thornton, deed dated Apr. 7, 1873		14,581 77
	Am't carried for'd		$170,365 54
1873.	Am't bro't for'd		170,365 54
June 2	By cash rec'd from rent, sq. 92		16 12
10	By " " avails d'ft Dees & Waller		10,000 00
July 1	By cash rec'd from rent, sq. 92		10 00
2	" " " " "		10 00
9	" " " John Bull		300 00
Aug. 1	" " " rent, sq. 92		20 00
Sept. 2	" " " " "		20 00
4	" correct entry on page 372		105 00
"	" cash rec'd from rent, sq. 92		15 00
Oct. 1	" " " " "		14 00
25	" " " avails d'ft on Laidlaw & Co.		10,000 00
Nov. 1	By cash rec'd from rent, sq. 92		20 00

Exhibit C—Continued.

1873.							
Aug. 4	To cash p'd 1st note (Cossin), sq. 67	$800 44					
	To cash p'd 6 mo. int. on same, sq. 67	24 02					
	To cash p'd 6 mo. int. on 2d & 3d notes, sq. 67	48 02					
			$872 48				
8	To cash p'd telegram (California)		3 35				
14	To release, ack., & recording, lot 2, sq. 92		7 25				
25	To cash p'd Joseph Gawler		23 50				
Sept. 3	" " " postage		1 62				
4	To " " " note & int. on p't 9, sq, 97		530 00				
9	To cash p'd 6 mo. int. on 1st note of $2,250, lot 1, sq. 92		67 50				
19	To cash p'd telegram (California)		3 35				
23	To cash p'd telegram (California)		3 35				
25	To cash p'd C. J. Hillyer		10,000 00				
Nov. 5	To " " " 6 mo. int. on $2,250, lot 1, sq. 92		67 50				
10	To cash p'd telegram (California)		3 18				
	Am't carried for'd		$190,033 32		Am't carried for'd		$190,895 66
588							
1873.	Am't bro't for'd		$190,033 32	1873.	Am't bro't for'd		$190,895 66
Nov. 15	To cash p'd 6 mo. int., $7,043.40, to Oct. 23d, '73, *lot* sq. 92		211 30	Dec. 2	By cash rec'd from rent, sq. 92		20 00
				1874.			
26	To cash p'd 6 mo. int., $4,879.38, sq. 68		170 78	Jan'y 2	" " " "		20 00
				15	" " " avails d'ft		
Dec. 2	To release, ack'm't, & recording, lot 9, sq. 97		7 25		Laidlaw & Co.		5,000 00
				Feb'y 2	By cash rec'd from rent, sq. 92		20 00

	3	To cash p'd telegram to California			3 18	Mar.	2	" " " " "	20 00
	5	To special imp't tax on 19th-St. front. sq. 138, $3,139.91; p'd in bonds at 80%			2,511 93	Apr.	"	" " " " "	20 00
						May	"	" " " " "	20 00
						"	29	" " " " "	10 00
						June	1	" " " " "	10 00
	11	To cash p'd telegram (California)			3 86		5	" " " C. J. Hillyer	6,150 00
							30	" " " rent, sq. 92	20 00
	22	To p'd special imp't tax on Conn.-Ave. front, sq. 92	1,602 22			July	1	By " " avails d'ft Laidlaw & Co.	15,000 00
		Int. on same	133 05						
					1,735 27				
1874.									
Jan'y	7	To cash p'd 6 mo. int., $9,000, sq. 67			270 00				
	13	To cash p'd telegram (California)			3 18				
	26	To cash p'd 1st note, sq. 176, 177	909 91						
		P'd 6 mo. int. on same, sq. 176, 177	27 30						
		P'd 6 mo. int. on 2d & 3d notes, sq. 176, 177	54 60						
					991 81				
	31	To cash p'd 1st note & int., lot 1, sq. 92			2,318 06				
Feb'y	4	To cash p'd 6 mo. int., $4,802.66, sq. 67	144 08						
		To cash p'd 6 mo. int., $4,600.88, sq. 67	48 02						
		To cash p'd 6 mo. int., $21,500, sq. 153	927 50						
					1,119 60				
	17	To am't endorsed on note of D. M. Davis on lot 1, sq. 92			67 50				
Apr'l	23	To cash p'd 6 mo. int., $7,043.40, sq. 92			211 30				
May	16	To cash p'd J. F. Olmstead, trus. W. Club			15 00				

Exhibit C—Continued.

1874.							
May 22	To cash p'd 6 mo. int., $4,879.39, sq. 68		$170 78				
June 3	To cash p'd last note & int., lot 3, sq. 92		3,711 75				
5	To cash p'd recording release, lot 3, sq. 92		1 25				
5	To release & ack'm't, lot 3, sq. 92		6 50				
17	To cash p'd note & int. note, Int., 6 mo. int. on $21,500 — sq. 153	5,000-00 177 91 752 50	5,939 41				
29	To cash p'd telegram to California		3 18				
30	To cash p'd telegram to Laidlaw & Co.		80				
July 3	To cash p'd taxes '73' 74, on sq. 67, 68, 69, 67, 92, 97, 138, 153, 176, & 177		1,767 99				
	Am't carried for'd		$211,266 00		Am't carried for'd		$217,155 66
589							
1874.	Am't bro't for'd		211,266 00	1874.	Am't bro't for'd		217,155 66
July 7	To cash p'd 6 mo. int., $9,000, sq. 67		270 00	July 15	By cash avails 2 d'fts on Laidlaw & Co.		7,678 12
10	To cash p'd J. W. Thompson, inaug. ball		200 00	30	By cash from rent, sq. 92		20 00
11	To cash p'd note & int., lot 16, sq. 69:			Aug. 31	" " " " "		20 00
				Oct. 1	" " " " "		20 00
				Nov. 2	" " " " "		20 00
	Prin.	800 00		Dec. 1	" " " " "		20 00
	Int.	96 00		1875.			
			896 00	Jan'y 2	" " " " "		20 00

	13	To cash p'd telegram (California)			2 84	26	By " " avails d'ft on Laidlaw & Co.	25,000 00
	"	To release, ack'm't, & recording, lot 16, sq. 69			6 75			
	14	To cash p'd telegram, Laidlaw & Co.			80			
	15	To cash p'd telegram, Laidlaw & Co.			1 52			
	28	To cash p'd 6 mo. int., $1,819.42, sq. 176, 177			54 60			
Aug.	3	To cash p'd 6 mo. int., $2,401.33, sq. 67	72 04					
		To cash p'd 6 mo. int., $2,401.33, sq. 67	72 04					
		To cash p'd note	2,401 33					
					2,545 41			
	8	" " " 2d note, sq. 67	800 44					
		P'd int. on same	24 01					
		" " " last note	24 01					
					848 46			
	22	To am't p'd int. on lot 1, sq. 92			67 50			
Sept.	26	To cash p'd telegram (California)			3 35			
	30	To cash p'd telegram, Laidlaw & Co.			90			
Oct.	1	To cash p'd telegram to him			2 84			
	2	" " " " California			3 52			
	23	To cash p'd 6 mo. int., $7,043.40, sq. 92			211 30			
Nov.	27	To cash p'd 6 mo. int., $4,879.38, sq. 68			170 78			
Dec.	14	To cash p'd 6 mo. int., $21,500, sq. 153			752 50			
1875.								
Jan'y	6	To cash p'd 6 mo int., —, sq. 67			270 00			
	26	" " " 2d note, sq. 176, 177	909 91					
		P'd 6 mo. int. on 2d note, sq. 176, 177	27 75					

Exhibit C—Continued.

1875.							
	P'd 6 mo. int. on 3d note, sq. 176, 177	$27 75					
			$965 41				
Jan'y 28	To p'd 1st inst. water-main tax, sq. 67	111 72					
	1st & 2d inst. water-main tax, sq. 153	391 74					
	1st & 2d inst. water-main tax, lot 4, sq. 138	106 19					
			606 65				
29	To p'd 1st & 2d inst. water-main tax, lot 3, sq. 138		91 93				
Feb'y 1	To cash p'd last note & int., lot 1, sq. 92:						
	Prin.	2,250 00					
	Int.	68 62					
			2,318 62				
	Am't carried for'd		$221,560 68		Am't carried for'd		$249,953 78
590							
1875.	Am't bro't for'd		221,560 68	1875.	Am't bro't for'd		249,953 78
Feb'y 1	To release & ack'm't, lot 1, sq. 92		7 00	Feb'y 1	By cash rec'd from rent, sq. 92		20 00
3	To cash p'd 6 mo. int., $2,401.33, sq. 67		72 04	Mar. 1	" " " " " " "		20 00
				Apr. 1	" " " " " " "		20 00
				May 1	" " " " " " "		20 00
5	To cash, recording release, lot 1, sq. 92		1 25	13	" correction of error, page 530		274 83
9	To cash p'd 6 mo. int., $800.44, sq. 67		24 01	June 1	" cash rec'd from rent, sq. 92		20 00
				30	" " " " " " "		20 00
March 29	To cash p'd taxes '74, '75 on sq's 92, 138, 153, 176, 177, 67, & 97		2,497 38	Aug. 2	" " " " " " "		20 00
				Sept. 1	" " " " " " "		20 00
				Oct. 1	" " " " " " "		20 00
May 8	To cash p'd telegram (B'k California)		3 01	Nov. 1	" " " " " " "		20 00
				10	" correct error on p. 397		1 75
13	To correct entry on page 531		503 76	Dec. 1	" cash rec'd from rent, sqr. 92		20 00

	28	To cash p'd last note & int. on lots in sq. 68:		
		Prin.	4,879 38	
		Int.	173 63	
		Recording release	1 25	
				5,054 26
	"	To release & ack'm't, sq. 68		5 50
June	14	To cash p'd 6 mo. int., $21,500, sq. 153		752 50
	29	To cash p'd tax '74, '75 on lot 8, sq. 153	57 38	
		To cash p'd tax '74, '75 on lot 16, sq. 69	27	
				84 38
July	2	To cash p'd 6 mo. int., $7,043.40, sq. 92		211 30
	6	To cash p'd 6 mo. int., 9,000, sq. 67		270 00
Aug.	10	To cash p'd last note (Mix), sq. 67	2,401 33	
		P'd int. note (Mix), sq. 67	72 04	
		" last " (Cossin), sq. 67	800 44	
		" int. " " " " "	24 41	
		" recording release, " "	1 25	
		" release	5 00	
				3,304 47
Sept.	27	To cash p'd telegram to San Francisco		2 70
Oct.	19	To cash p'd Faild's plats		15 00
	25	To " " 6 mo. int., $7,043.40, sq. 92		211 30
	30	To cash p'd taxes '75, '76 on sq's 153, 92, 67, 176, 177, 69, 68, 97, 138		789 63
Nov.	10	To correct entry on p. 384		105 00
	27	" cash p'd telegram to him		2 50
	29	To commission on loan to "Stewart" by Geo. Taylor	600 00	

Exhibit C—Continued.

1875.							
	To commission on sale "Stewart" house	$1,000 00					
			$1,600 00				
Dec. 2	To cash p'd telegram to him		3 18				
	Am't carried for'd		237,080 85		Am't carried for'd		$250,450 36
	590*a*						
1875.	Am't bro't for'd		237,080 85	1875.	Am't bro't for'd		250,450 36
Dec. 8	To cash p'd telegram to him		2 50	Dec. 31	By cash rec'd from rent, sq. 92		20 00
9	" " " "		2 50	1876.			
13	To cash p'd 6 mo. int., $21,500, sq. 153		752 50	Feb'y 1	" " " " "		20 00
				Mar. 1	" " " " "		20 00
1876.				Apr. 1	" " " " "		20 00
Jan'y 4	To cash p'd 6 mo. int., 9,000, sq. 67		270 00	May 1	" " " " "		20 00
				June 1	" " " " "		20 00
11	To cash p'd framing plan of house		10 50	17	By p't lot 4, sqr. 138, sold Wm. M. Galt, 13,768 sq. ft., at $1.25		17,210 85
17	To cash p'd p't cost maps		9 33				
26	" " last note, sq. 176, 177	909 91					
	P'd int. last note, sq. 176, 177	54 60					
	" ack'm't & recording release	2 25					
	" release deed	5 00					
			971 76				
28	To cash p'd p't cost map		3 50				
Mar. 31	" " telegram to him		2 50				
Apr'l 3	To cash p'd taxes on sq's 67, 68, 69, 92, 97, 153, 138, 176, 177, last ½ '75, '76		789 60				
22	To cash p'd filling sqr. 67		14 38				
24	To cash p'd 6 mo. int., $7,043.44, sqr. 92		211 30				
May 3	To cash p'd water-main tax on sq's 92, 67, 153		601 79				
2	To cash p'd filling sq. 69		11 00				

6	" " " " 67		14 37				
11	To cash p'd water-main tax, lot 4, sq. 138		57 33				
13	To cash p'd filling sq. 67		10 25				
18	" " " "		13 12				
20	" " telegram		2 50				
26	" " "		2 50				
30	" " "		6 50				
8	To cash p'd ex. title & ack't deed, p't 4, sq. 138		16 00				
13	To cash p'd telegrams		5 25				
15	To cash p'd 6 mo. int., $21,500, sq. 153		752 50				
17	To cash p'd telegrams, "Ky."	1 60					
	P'd re-recording deed, sq. 138	1 75					
			3 35				
17	To sub 14, sqr. 628 (taken from Galt)	1,700 00					
	To sub 12, sqr. 570 (taken from Galt)	3,300 00					
			5,000 00				
	Am't carried for'd		$246,617 68		Am't carried for'd		$267,781 21
591							
1876.	Am't bro't for'd		246,617 68	1876.	Am't *carried* for'd		267,781 21
June 17	To deed & plat of subdivision, sq. 138		10 00	June 30	By cash rec'd from rent, sq. 92		20 00
				July 31	" " " " "		20 00
19	To cash p'd clerk court, Ky., sq. 138		1 10	Sept. 1	" " " " "		20 00
				29	By lot 14, sq. 628, sold Jas. H. Rowland		1,550 00
21	To cash p'd recording Galt deed		1 50				
31	" " telegram		30	30	By cash rec'd from rent, sq. 92		20 00
July 6	To cash p'd 6 mo. int., $9,000, sqr. 67		270 00	Nov. 2	" " " " "		20 00
				Dec. 1	" " " " "		20 00
Sept. 25	To cash p'd telegram		4 76				
30	To cash p'd commissions on sale lot 14, sqr 628		50 00	30	Lots 1, 2, 3, 4, sq. 176, sold Thomas Young by deed dated Oct. 24, '76		2,700 00
Oct. 23	To cash p'd 6 mo. int., $7,043.40, sq. 92		211 03				

Exhibit C—Continued.

1876.							
Dec. 12	To care and management of whole property from May, 1872, to date		$5,973 33				
14	To cash p'd 6 mo. int., $21,500, sq. 153		752 50				
30	To 2 notes Thos. Young, dated Oct. 14, '76, to order J. M. Latta, each $900, payable 12 & 24 mo.		1,800 00				
30	To 1 note Thomas Young, dated Dec. 30th, '76, pay'l 90 days, 8% int.		250 00				
	Balance		16,209 01				
			$272,151 21				$272,151 21

592 "EXHIBIT D." J. J. J.

592*a* DR. *Sunderland and Hillyer in Account Current with Kilbourn and Latta, June 26, '72, to Dec. 30, 1876.* CR.

1872.				1872.			
Sept. 30	Paid 1st note on p't lot 21, sq. 158, prin. & 6 mo. int.	$266 06		Oct. 1	By cash received from C. J. Hillyer, his check for		$6,000 00
	6 mo. int. on 2 & 3 notes	15 50	$281 56	3	By cash received from Thomas Sunderland, d'ft on Lees & Waller		10,000 00
"	Paid gen'l taxes of 1872, '73 on sq. 156		604 68	1873.			
Oct. 2	Paid Thomas Young 12 mo. int. on 2 notes of $13,000, & 6 mo. int. on 1 note of $6,000, sq. 156	2,030 00		Jan. 8	By cash received from C. J. Hillyer		5,000 00
				10	By cash received from Thos. Sunderland	2,420 08	

"	Paid G. W. Riggs 1st note on sq. 156—				Less am't credited ac. T. S.	1,948 09	
	Prin.	6,500 00					471 99
	Int.	227 50		M'ch 31	By cash received from J. A. Hopkins, rent		21 00
			6,727 50	May 5	By cash received from T. Sunderland, certificate of Lees & Walter		15,742 97
"	Paid G. W. Riggs int. for 6 mo. on 2 note- of $6,500		227 50				
"	Paid G. W. Riggs int. for 6 mo. on 3 note- of $7,000		245 00				
				9,230 00			
"	Paid gen'l taxes of 1872, '73 on p't lot 21, sq. 158			11 93			
"	Paid for recording 19 deeds			28 50			
5	Paid gen'l taxes of 1872, '73 on lots 10, 3, 8, & 17, sq. 158		151 30				
	Paid gen'l taxes of 1872, '73 on lots 3, 4, & 5, sq. 67		61 08				
	Paid gen'l taxes of 1872, '73 on lots 18 to 25, sq. 97		46 35				
	Paid gen'l taxes of 1872, '73 on lot 10, sq. 97		16 48				
	Paid gen'l taxes of 1872, '73 on sq. 115		331 83				
	Paid gen'l taxes of 1872, '73 on sq. 115		889 26				
	Paid gen'l taxes of 1872, '73 on lots 11 to 25, sq. 195		488 69				
				1,984 99			
15	Paid A. P. Fardon for draining—						
	Sq. 134	17 50					
	" 155	7 00					
				24 50			
	Sq. 151	419 27					
	" 158	12 03					
23	Paid gen'l taxes of 1872, '73 on W. ½ lot 9, sq. 158			432 30			
Nov. 27	Paid 6 mo. int. on note of $54,550.65, sq. 155		1,909 27				

"*Exhibit D*"—Continued.

	Paid 6 mo. int. on note of $32,000, sq. 115	$960 00				
1872.			$2,899 27			
Dec. 3	Paid 6 mo. int. on note of $40,000 on lots in sq. 195		1,400 00			
4	Paid 6 mo. int. on note of $17,000 on sq. 156	595 00				
"	Paid 6 mo. int. on 2 notes of $6,500 each, sq. 115	390 00				
"	Paid 6 mo. int. on note of $4,000 on lot 17, sq. 158	120 00				
			1,105 00			
5	Paid 6 mo. int. on note of $18,864.75, lots in sq. 151	565 94				
"	Paid 6 mo. int. on note of $2,500 on lot 10, sq. 158	75 00				
			640 94			
21	Paid 1st note on lots 3, 4, & 5, sq. 67—					
	Prin.	2,261 33				
	Int. 6 mo.	68 97				
			2,330 30			
1873.						
Jan. 25	Paid for lumbar for box drain—					
	Sq. 154	12 00				
	" 155	6 58				
			18 58			
M'ch 31	Paid 6 mo. int. on 2 notes of $258.31 each on lot 2, sq. 158		15 50			
Apr'l 2	Paid 6 mo. int. on 3 notes of $7,000, $6,500, & 6,000, sq. 156		682 50			
10	Paid for real estate book		50 00			
	Amount carried forward		$21,710 55	Am't carried for'd		$37,235 96

1873.				
	593 Am't bro't forward			21,710 55
May 9	Paid 6 mo. int. on note of $2,500, lot 10, sq. 158			75 00
17	Paid note of $17,000 and int., sq. 156			17,595 00
24	Paid 6 mo. int. on note of $54,550.65, sq. 155			1,909 27
26	Paid 1st note & int. on W. p't lot 9, sq. 158—			
	Prin.	800 00		
	Int.	47 47		
				847 47
28	Paid 6 mo. int. on note of $32,000, sq. 115			960 00
29	Paid 1st note & int. on lot 3, sq. 158—			
	Prin.	2,712 00		
	Int.	163 17		
				2,875 17
30	Paid 2d note on sq. 115—			
	Prin.	6,500 00		
	6 mo. int.	195 00		
	6 mo int. on 3d note, same sq.	195 00		
				6,890 00
"	Paid 6 mo. int. on note of $4,000, lot 17, sq. 158			120 00
June 2	Paid 1st note and int. on lots 27 to 49, sq. 134—			
	Prin.	3,500 00		
	Int.	210 00		
	Paid 1 year int. on 2d & 3d notes, same lots	420 00		
				4,130 00
3	Paid 6 mo. int. on note of $40.00, lots 11 to 25, sq. 195			1,400 00
4	Paid 6 mo. int. on note of $18,864.75, lots in sq. 151			565 94

1873.				
	Amount bro't forward			37,235 96
May 17	By cash rec'd from C. J. Hillyer, his share of $17,000 paid this day			4,398 75
27	By cash rec'd from Thos. Sunderland, d'ft on Lees & Walter			11,000 00
June 9	By cash rec'd Otto Gant, 1 yr.'s rent of sq. 115			250 00
20	By cash rec'd from August Muller, rent of sq. 66			60 00
July 9	By cash rec'd from C. J. Hillyer, his check for			5,000 00
18	By note rec'd from D. M. Davis for rent			105 00
Aug. 9	By cash rec'd from T. Sunderland, d'ft on Lees & W.			5,000 00
Sept. 23	By cash rec'd from T. Sunderland, d'ft on Lees & W.			10,000 00
Oct. 2	By cash rec'd from Aug. Mueller, rent of sq. 66			50 00

"*Exhibit D*"—Continued.

1873.				
June 6	Paid 1 year int. on note of $1,200, p't lot 10, sq. 97			$72 00
17	Paid 6 mo. int. on note of $20,000 on sq. 66			600 00
21	Paid last note & int. on lots 2, 3, & 4, sq. 67—			
	Prin.		$2,261 33	
	Int.		136 79	
				2,398 12
"	Paid 6 mo. int. on note of 31,700 on sq. 93			951 00
23	Paid ½ cost of maps			63 75
"	Paid recording release to lots 3, 4, & 5, sq. 67			1 25
Sept. 5	Paid correct credit entry of July 18th; should have credited to Thos. Sunderland			105 00
Oct. 2	Paid 6 mo. int. on note of $7,000, square 156			245 00
4	Paid on % of note of $6,500 on square 156			1,000 00
6	Paid on % of int. on note of $13,000, square 156			700 00
7	Paid bal. % of int. on 3 notes, two of $13,000 for 1 yr. & 1 of $6,000, sq. 156			1,330 00
11	Paid 2d note & int. on W. 25 ft. of lot 21, sq. 158—			
	Prin.		258 31	
	Int.		7 76	
	And interest on 3d note, same lot, to Sept. 28, '73		7 75	
				273 82

Nov. 4	Paid on % of note of $6,500, sq. 156		1,000 00
	Amount carried forward		$67,818 34
	594		
1873.	Amount bro't forward		67,818 34
Nov. 8	Paid on % of note of $6,500 & int., sq 156		2,227 50
11	Paid 6 mo. int. on note of $2,500 on lot 10, sq. 158		75 00
24	Paid 6 mo. int. on note of $54,550.65, sq. 155		1,909 27
25	Paid 6 mo. int. on note of $32,000, sq. 115		960 00
Dec. 1	Paid 6 mo. int. on note of $4,000, lot 17, sq. 158		120 00
3	Paid 6 mo. int. on note of $40,000, lots in sq. 195		1,400 00
5	Paid 6 mo. int. on note of $18,860.75, in sq. 151		565 94
6	Paid on % of note of $6,500, sq. 156		1,500 00
11	Paid 6 mo. int. on note of $6,500, sq. 115		195 00
15	Paid bal. of 2d note of $6,500, sq. 156		1,000 00
25	Paid 6 mo. int. on note of $20,000, sq. 66		600 00
29	Paid 6 mo. int. on note of $31,700, sq. 93		951 00
1874.			
Jan. 17	Paid special imp't tax on lots 11, 12, & 13, sq. 195		1,890 18
Apr'l 2	Paid 6 mo. int. on note of $7,000, sq. 156	245 00	
"	Paid 6 mo. int. on note of $6,000, sq. 156	210 00	
			455 00

	Am't carried forward		$73,099 71
1873.	Amount bro't forward		73,099 71
Nov. 12	By cash rec'd from Thos. Sunderland, d'ft on Laidlaw & Co.		5,000 00
Dec. 5	By cash rec'd from Thos. Sunderland, d'ft on Laidlaw & Co.		5,000 00
20	By cash rec'd from Aug. Muller, rent of sq. 66		50 00
1874.			
Feb'y 3	By cash rec'd from Bechet & % rent of sq. 195		50 00
26	By cash rec'd from Hopkins & % rent of sq. 67		21 00
Mar. 28	By cash rec'd from Aug. Muller & % rent of sq. 66		40 00
May 18	By cash rec'd from C. J. Hillyer, being part of claim against Day, Cook & Co.		3,030 59
28	By cash rec'd from C. J. Hillyer		6,000 00
June 1	By cash rec'd from C. J. Hillyer		15,000 00
3	By cash rec'd from C. J. Hillyer for T. S.		5,000 00

"*Exhibit D*"—Continued.

1874.				
May 14	Paid 6 mo. int. on note of $2,500, lot 10, sq. 158			$75 00
25	Paid 6 mo. int. on note of $32,000, sq. 115			960 00
28	Paid last note & int., lot 10, sq. 97—			
	Prin.	$1,200 00		
	Int.	72 00		
				1,272 00
"	Paid drawing & recording release, lot 10, sq. 97			6 75
29	Paid last note & int. on lot 3, sq. 158—			
	Prin.	2,712 00		
	Int.	326 79		
				3,038 79
June 1	Paid 2d note & int. on square 115—			
	Prin.	6,500 00		
	Int.	195 00		
"	Recording & acknowledging release	2 25		
				6,697 25
"	Paid drawing release, same sq.			5 00
2	Paid " ack'g & recording, lot 3, sq. 158			7 25
3	Paid last note & int. on p't of lot 9, sq. 158, prin. & int.	896 00		
	Paid 6 mo. int. on lots 11 to 25, sq. 195	1,400 00		
	Paid ack'g & recording release to lot 9, sq. 158	1 75		
				2,297 75
"	Paid release of lot 9, sq. 158			5 50

4	Paid last note & int. on lot 8, sq. 158—						
	Prin.	2,000 00					
	Int.	241 00					
			2,241 00				
"	Paid 2 note & int. on — 27 to 49, sq. 134—						
	Prin.	3,500 00					
	Int.	200 00					
			3,710 00				
	Am't carried forward		101,983 02		Amou-t carried forward		112,291 30
595							
1874.	Amount bro't forward		101,983 02	1874.	Amount bro't forward		112,291 30
June 4	Paid 1 year's int. on 3d note, lots in sq. 134		210 00	June 22	By cash rec'd from Aug. Mueller, rent of sq. 66		80 00
5	Paid recording release, lot 8, sq. 158		1 25	July 8	By cash rec'd from D. M. Davis, rent of sq. 93		120 00
"	Paid for release & ack'gment, same lot		6 00	Aug. 4	By cash rec'd for sale of house, sq. 115		30 00
6	Paid 6 mo. int. on note of $54,550.65 on sq. 155		1,909 27	24	By cash rec'd from Bechet of ⅝ rent of sq. 195		22 00
8	Paid 6 mo. int. on note of $18,864.75 on lots, sq. 151		565 94	Oct. 3	By cash rec'd from Thomas Sunderland		17,000 00
22	Paid 6 mo. int. on note of $20,000 on lots, sq. 66		600 00	Dec. 9	By cash rec'd from Thomas Sunderland, d'ft on Laidlaw & Co.		5,000 00
27	Paid 6 mo. int. on note of $31,700, sq. 93		951 00				
July 3	Paid gen'l taxes of 1873, '74—						
	Sq. 66	513 56					
	" 93	686 37					
	Lots in sq. 97	83 04					
	" " " 134	227 05					
	" 115	707 61					
	" 151	701 36					
	" 155	1,388 93					
	" 156	1,792 22					
	Lots in " 158	*297 10					

* This entry is wrong; should be $301.10 instead of $297.10.

"*Exhibit D*"—Continued.

1874.							
		Lots 3, 4, & 5, sq. 67	$92 72				
		" 11 to 25, sq. 195	755 18				
				$7,245 14			
July	16	Paid special imp't tax, 1st inst., sq. 115, 93, 158, & 97		1,589 89			
Oct.	2	Paid 6 mo. int. on 2 notes of $13,000 each, sq. 156		1,820 00			
	5	Paid 3d note & int. on sq. 156—					
		Prin.	7,000 00				
		Int.	249 07				
		" 4th note & int. on sq. 156—					
		Prin.	6,000 00				
		Int.	213 50				
				13,462 57			
	23	Paid on % of int. of note of $32,000, sq. 115		300 00			
Nov.	9	Paid 6 mo. int. on lot 10, sq. 158		75 00			
	24	Paid 6 mo. int. on note of $54,550.65, sq. 155		1,909 29			
	25	Paid on % of int. on note of $32,000, sq. 115		300 00			
	"	Paid last note & int. on p't 21, sq. 158—					
		Prin.	258 31				
		Int.	15 50				
		Recording release	1 25				
				275 06			
	"	Paid for release of same lot		5 00			
Dec.	3	Paid 6 mo. int. on note of $40,000, sq. 195		1,400 00			
	5	Paid for telegram to California		3 35			
		Amount carried forward		$134,611 76	Amount carried forward		$134,543 30

1874.		596 Amount bro't forward		134,611 76
Dec.	18	Paid 6 mo. int. on note of $20,000, sq. 66		600 00
	21	Paid 6 mo. int. on note of $18,864.75, sq. 151	565 94	
		Paid 6 mo. int. on note of $31,700, sq. 93	951 00	
				1,516 94
	24	Paid on % of int. on note of $32,000, sq 115		300 00
1875.				
Jan.	6	Paid bal. of int. on note of $32,000, sq. 115		60 00
	22	Paid for telegram to Bank of California		3 18
	28	Paid water-main tax in part of sqr. 66, 93, 97, 115, 151, & 195		1,830 41
	"	Paid special imp't tax, 2nd inst., on lots in sq's 93, 97, 115, & 158		1,688 34
Mar.	29	Paid gen'l taxes of 1874, '75 on sq'r's 195, 158, 158, 155, 151, 134, 115, 93, 66, 67, & 97		11,138 49
Ap'l	27	Paid % of int. on note of $32,000, sq. 115		360 00
May	12	Paid last note & int. on lot 10, sq. 158—		
		Prin.	2,500 00	
		Int.	76 25	
				2,576 25
	14	Paid ack'g, recording, & drawing release, lot 10, sq. 158		7 25
	19	Paid gen'l taxes of 1874, '75 on lots in sq. 151		103 46
	25	Paid on % of int. on note of $32,000, sq. 115		300 00
	28	Paid 6 mo. int. on note of $54,550.65, sq. 155		1,909 27

1874.		Amount bro't forward		134,543 30
Dec.	19	By cash rec'd from Aug. Muller, rent of sq. 66		100 00
1875.				
Apr'l	29	By cash rec'd from Lightfoot, 1 mo. rent of sq. 195		5 00
May	11	By cash rec'd from Thomas Sunder., d'ft of Laidlaw & Co.		15,000 00
	15	By cash rec'd from Aug. Muller, rent of sq. 66		100 00
	17	By cash rec'd from Hopkins, rent of sq. 67		25 00
June	4	By cash rec'd from Lightfoot, 1 mo. rent of sq. 195		5 00
	8	By cash rec'd from Thomas Sunder., d'ft on Laidlaw		42,000 00
	19	By cash rec'd from August Muller, 2 mo. rent sq. 66		40 00
Aug.	30	By cash rec'd from Lightfoot, rent of sq. 195		8 00

"*Exhibit D*"—Continued.

1875.						
May 29	Paid telegram to San Francisco		$3 40			
31	Paid note & int. on lot 17, sq. 158:					
	Prin.	$4,000 00				
	Int.	360 00				
	Drawing, recording, & ack'g release	7 25				
			4,367 25			
June 4	Paid drawing, recording, & ack'g release, lots 27 to 49, sq. 134		7 25			
"	Paid last note & int. on lots 27 to 49, sq. 134	3,000 00				
	Int.	211 75				
			3,711 75			
7	Paid 6 mo. int. on note of $18,846.75, lots in sq. 151		565 94			
8	Paid on ⅞ of principal of note of $40,000, lots in sq. 195	30,000 00				
	Interest in full	1,438 89				
			31,438 89			
14	Paid 6 mo. int. on note of $20,000, sq 66		600 00			
21	Paid 6 mo. int. on note of $31,000, sq. 93		951 00			
25	Paid bal. of int. on note of $32,000, sq. 115		300 00			
Oct. 2	Paid 6 mo. int. on 2d note of $13,000, sq. 156		910 00			
5	Paid 6 mo. int. on 1st note of $13,000, sq. 156	917 58				
	Paid principal of same note	13,000 00				
			13,917 58			
	Amount carried forward		213,778 41	Amount carried forward		191,826 30

1875.		597 Amount bro't forward		213,778 41
Oct.	29	Paid for advertising houses on sq. 66		7 50
	30	Paid first ½ gen'l tax 1875, '76 on sq's 67, 158, 97, 115, 156, 93, 66, 195, 134, 151, 155		2,858 51
Nov.	10	Paid for recording deed to sqrs. 66 & 93		1 75
	24	Paid 6 mo. int. on note of $54,550.65, sq. 155		1,909 27
	29	Paid 6 mo. int. on note of $32,000, sq. 115		960 00
Dec.	1	Paid for books sent to Thomas Sunderland		6 50
	16	Paid 6 mo. int. on note of $20,000, sq. 66		600 00
	18	Paid 6 mo. int. on note of $18,864.75, sq. 151		565 94
	21	Paid 6 mo. int. on note of $31,700, sq. 93		951 00
	31	Paid Will in part for making map		5 00
1876.				
April	1	Paid Tom Carroll for filling sq. 93		7 50
	3	Paid last ½ gen'l tax 1875, '76 on sq's 66, 67, 93, 97, 134, 115, 151, 155, 156, 158, & 195		2,858 48
	10	Paid Tom Carroll for filling square 67		15 62
	15	Paid Tom Carroll for filling square 93		10 00
	25	Paid on % of int. on note of $32,000, sqr. 115		300 00
May	4	Paid water-main tax on lots in sq's 93, 151, 115, 66, 195		915 85
	24	Paid 6 mo. int. on note of $54,550.65, sq. 155		1,909 27

1875.		Amount bro't forward		191,826 30
Oct.	6	By cash rec'd from Thomas S., d'ft on Kountze Bros.		16,000 00
	16	By cash rec'd from Lightfoot, rent of sq. 195	10 00	
	"	By cash rec'd from Henry Theodore for 2 houses, sq. 93	275 00	
				285 00
	29	By cash rec'd from Aug. Muller for 2 houses, sq. 66		350 00
	30	By cash rec'd from E. J. Hillyer		3,430 10
Nov.	10	By cash rec'd from D. M. Davis, rent of sq. 93		105 00
Dec.	1	By cash rec'd from Thomas Sunder., remittance to Laidlaw & Co.		2,000 00
	9	By cash rec'd from Thomas Sunder. by Laidlaw & Co.		8,000 00
	13	By cash rec'd for house on sq. 66		11 81
	16	By cash rec'd from Aug. Mueller, rent of house, sq. 66		70 00
1876.				
Jan.	31	By cash rec'd from Lightfoot on % rent of sq. 195		4 00
Feb'y	1	By cash rec'd from Lightfoot on % rent of sq. 195		5 00
Apr'l	4	By cash rec'd from Thos. Sunderland by Laidlaw & Co.		10,000 00
June	6	By cash rec'd from Thos. Sunderland by Laidlaw & Co.		10,000 00
July	1	By cash rec'd from Thos. Sunderland by Laidlaw & Co.		11,111 00

"*Exhibit D*"—Continued.

1876.				
May	26	Paid on % of int. on note of $32,000, sq. 115		$300 00
June	17	Paid 6 mo. int. on note of $20,000, sq. 66		600 00
	24	Paid 6 mo. int. on note of $18,864.75, sq. 151	$565 94	
		Paid bal. of int. on note of $32,000, sq. 115	360 00	
		Paid 6 mo. int. on note of $31,700, sq. 93	951 00	
		Paid on % of principal of last note, sq. 93	1,700 00	
				3.576 94
	28	Paid telegrams to Sunderland		7 50
July	5	Paid on % of prin. of note of $20,000, sq. 66		3,000 00
	6	Paid on % of prin. of note of $31,700, sq. 93		5.000 00
	21	Paid telegrams		5 90
	29	Paid expenses of Mr. F. Olmstead to Philadelphia		15 00
	"	Paid on % of prin. of $20,000 note, sq. 66		4,000 00
Aug.	3	Paid for telegrams to & from Phil'a		1 20
	5	Paid in full of int. on $31,700 note to Oct. 21, 1876, sq. 93	683 34	
	"	Paid expenses of J. F. Olmstead to Phil.	16 00	
				699 34
		Amount carried for'd		244,866 48

Amount carried forward 253,198 21

1876.	598	Amount bro't forward		244,866 48
Aug. 18		Paid bal. of int. claimed on $31,700 note, sq. 93		6 95
Sept. 25		Paid for examination of title to sq. 156		10 00
29		Paid expenses of J. F. Olmstead to Phil.		17 50
30		Paid telegram to J. M. Latta		1 50
"		Paid for examination of title to sq. 195		10 00
Oct. 5		Paid 6 mo. int. on note of $13,000, to Oct. 2, '76, sq. 156		910 00
9		Paid telegram to Latta		1 00
13		Paid int. on bal. of $20,000 note, sq. 66		72 00
"		Paid last note on square 156—		
		Prin.	13,000 00	
		Int. in full	27 80	
				13,027 80
"		Paid N. L. Jeffries on % of commissions on loan of $50,000, sq. 156		500 00
17		Paid for recording 2 releases, sq. 156		2 50
21		Paid for recording 2 deeds of trust, sq. 156		4 00
"		Paid for telegram to Phil.		40
24		Paid on % of principal of $31,700 note, on sq. 93		10,000 00
Nov. 6		Paid on % of principal of $31,700 note, on sq. 93		5,000 00
8		Paid telegram to Mr. Lewis, Phil.		58
16		Paid on % of $20,000 note, on sq. 66, prin.		2,000 00
28		Paid 6 mo. int. on note of $32,000, sq. 115		960 00
Dec. 7		Paid 6 mo. int. on note of $54,550.65, sq. 155		1,909 27

1876.	Amount bro't forward		253,198 21
Aug. 31	By cash rec'd from Lightfoot, rent of sq. 195		10 00
Oct. 10	By bond rec'd from N. L. Jeffries for 2 deeds of trust on square 156, dated Oct. 10, 1876, & pay'l- in 5 years; int. 8%, pay'l- semi-annually		50,000 00
	MEM.—These bonds were taken at par without the last coupon.		
Dec. 30	By temporary loan made on $20,000 bond		17,100 00

"*Exhibit D*"—Continued.

12	For management, care, &c., of their property from May, 1872, to date, at the rate of $5,000 per annum, on the whole property of Sunderland & Hillyer & Thomas Sunderland		$16,526 67		
14	Paid for interest on a temporary loan of $11,400, from Oct. 24th to date		113 52		
15	Paid Aug. Mulleur 6 mo. int. to date, at 8%, on bal. of $20,000 note, sq. 66		561 60		
30	Paid discount & commission on sale of $30,000 of the gold bond rec'd from N. L. Jeffries		749 33		
"	For unsold balance of 6% gold bond turned over to J. M. Latta, trustee, subject to loan of $17,000, which is credited opposite		20,000 00		
	Balance to % of K. & O.		3,053 11		
			$320,308 21		$320,308 21

599a DR. *Sunderland & Hillyer in Account Current with James M. Latta, Trustee.* CR.

1877..				1877.			
Feb'y 12	To am't p'd for discount on sale of $20,000, in 6 % gold bonds, rec'd from Kilbourn & Olmstead		$400 00	Jan. —	By am't of 6 % gold bond rec'd from Kilbourn & Olmstead		$20,000 00
"	To am't paid note of J. M. Latta, tr., at Nat'l Metro. B'k, for which said bonds were held as coll.	$17,112 00		Apr'l 13	By am't of cash rec'd from Kilbourn & Olmstead		2,000 00
	Int. on same	173 82		June 2	By am't recieved for east 1 foot in width of lot 21, sq. 158, sold to —— ——		100 00
			17,285 82	4	By am't recieved from John W. Thompson, being loan on squares 93, 134, & 158 for 1 year at 9 % interest		35,000 00
Ap'l 13	To am't p'd N. L. Jeffries, 6 mo. int. on loan of $50,000 on square 156		2,000 00	Aug. 29	By am't rec'd from Kilbourn & Olmstead on % grading of square 158 (see opposite)		2,563 19
"	To am't p'd for recording subdivision of sq. 156	10 00		"	By am't recieved from C. J. Hillyer		3,700 00
23	To am't p'd Forsythe for surveying sq. 156	10 00		Nov. 16	By am't recieved from C. J. Hillyer		2,000 00
			20 00				
May 22	To am't p'd for certificate, &c.		2 50				
"	To am't p'd 6 mo. int. on note of $54,550.65, sq. 155	1,909 27					
"	To am't p'd on account of principal of same, sq. 155	9,550 65					
			11,459 92				
25	To am't p'd 6 mo. int., to date, on note of $32,000 on sq. 115		904 00				
"	To am't p'd grading east & north fronts of sq. 156		50 00				
"	To am't p'd expenses of correcting deed, lot 21, sq. 158		3 50				

"*Exhibit E*"—Continued.

1877.				
May	31	To am't p'd 2nd half of gen'l taxes of 1876–'77		$2,827 41
June	2	To am't p'd for release, sq. 134	$1 00	
	"	To am't p'd for re-recording same, sq. 134	1 75	
				2 75
	4	To am't p'd F. D. Lewis, administrator, the bal. of $31,700 note on sq. 93		8,465 77
	"	To am't p'd John W. Thompson, int. on advance		35 75
	"	To am't p'd for recording & ack'g release & deed of trust on sqrs. 93, 134, & 158, secured to Thompson		4 00
	5	To am't p'd 6 mo. int. on bal. of $40,000, sq. 195		350 00
	"	To am't p'd M. Ashford for exam'g title to sqrs. 93, 134, & 158		80 00
	"	To am't p'd N. Wilson for legal services loan Thompson		25 00
July	6	To am't p'd Kilbourn & Olmstead to pay water-main tax		1,000 00
	23	To am't p'd 6 mo. int. on bal. of $20,000 note, sq. 66		442 10
Aug.	20	To am't p'd 2nd half gen'l taxes of 1876–'77 on sq. 195		321 47
	"	To am't p'd for grading lots 3, 8, 10, 17, & p't of 9 & 21, sq. 158		4,027 45
	"	To am't p'd Aug. Mueller on ⅔ $20,000 note, sq 66		1,500 00

Nov. 5	To am't p'd telegram to Hillyer		2 52
	Amount carried forward		$51,209 96
	600		
1877.	Amount bro't forward		51,209 96
Nov. 16	To am't p'd 6 mo. int. on loan of $50,000, sq. 156		2,000 00
27	To am't p'd telegrams to them	5 04	
"	To am't p'd safe deposit	15 00	
"	To am't p'd expenses to Phil'a for loan	15 00	
			35 04
30	To am't p'd taxes		136 84
Dec. 1	To am't p'd 6 mo. int. on bal. of $32,000 note, sq. 115		720 00
4	To am't p'd 6 mo. int. on loan of $35,000, sqs. 93, 134, 158		1,575 00
8	To am't p'd 6 mo. int. on bal. of $40,000 note, sq. 195		350 00
14	To am't p'd 6 mo. int. on bal. of $20,000 note, sq. 66		410 00
29	To am't p'd telegram to Hillyer		2 30
30	To care and management of property as trustee		3,885 00
1878.			
Jan'y 4	To am't p'd 6 mo. int. on bal. of $54,550.65 note, sq. 155		1,575 00
"	To am't p'd on ac. of prin. of $20,000 note, sq. 66		3,500 00
Feb'y 28	To am't p'd first ½ gen'l taxes of 1877–'78 on sqs. 93, 134, 158, 195		938 37
Mar. 7	To am't p'd for surveying to lay drain, sq. 156		3 50
23	To am't p'd for draining, sq. 156		89 40
Apr'l 15	To am't p'd for sewer traps, sq. 156		15 00

	Am't carried forward		$65,363 19
1877.	Amount bro't forward		65,363 19
Dec. 1	By am't of cash recieved from C. J. Hillyer		2,500 00
1878.			
Jan. 4	By am't of cash recieved from Thos. Sunderland		8,500 00
Apr'l 16	By am't of cash recieved from C. J. Hillyer		2,000 00

"*Exhibit E*"—Continued.

1878.							
Apr'l 16	To am't p'd 6 mo. int. on loan of $50,000, sq. 156		$2,000 00				
May 23	To am't p'd 6 mo. int. on bal. of $32,000 note, sq. 115		720 00				
"	To am't p'd 6 mo. int. on bal. of $40,000 note, sq. 195		350 00				
"	To am't p'd 6 mo. int. on bal. of $54,550.65 note, sq. 155		1,575 00				
June 20	To care & management of the property as trustee from Jan'y 1, 1878, to date		1,792 85				
	Balance		5,480 93				$78,363 19
			$78,363 19		By balance		$5,480 93

601 EXHIBIT "F." J. J. J.

601*a* DR. *Sunderland and Hillyer in Account with Kilbourn and Olmstead.* CR.

1876.				1876.			
Dec. 27	To cash p'd Nat. Met: Bank, int. to date on note of K. & L., $22,000, secured by $25,000 6 % gold bonds		$356 88	Dec. 27	By am't balance % from Book S of Kilbourn & Latta, assumed by Kilbourn and Olmstead		$18,126 84
1877.							
Jan'y 6	To cash p'd J. M. Latta to pay int. to Riley on sq. 67 for % T. S.		270 00				
Feb'y 5	To cash p'd R. I. Fleming on order H. A. Willard, six						

	mos.' int. on note on sq. 151, to Dec. 4, 1876			565 94		
"	To cash p'd G. W. Riggs, int. to Dec. 8th, 1876, on $10,000 remaining unpaid of $40,000, on sqr. 195			700 00		
12	To cash p'd, ½ gen'l tax on the following property, viz:					
	Sq. 66, of 1 & 2, all 3, 4, 5, 6, 7, 8		154 50			
	Sq. 67, 3, 4, 5		32 03			
	" 93, all		332 98			
	" 97, of 10, S. 18 to 25		34 57			
	" 115, all		477 73			
	" 134, S. 27 to 49		79 12			
	" 155, all		409 76			
	" 156, "		508 52			
	" 158, 3, 8 of 9, 10, 17 of 21		182 72			
	" 195, 11 to 25		299 59			
				2,583 52		
	Also for taxes on property of Thos. Sunderland as follows, viz:					
	Sqr. 67, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, & 19		135 95			
	Sqr. 68, 2, 3, 15, & 16		27 76			
	" 69, 16 & 17		15 27			
	" 92, all		159 49			
	" 97, of 9		3 53			
	" 138, of 1, 3, & 4		145 83			
	" 153, all		208 85			
	" 177, S. E & F		9 79			
				706 47		
	MEM.—The penalty of 4 % on the above taxes paid by K. & O. & charged to expense %.					
17	To cash p'd F. D. Lewis, sqr. 93			2,000 00		
	Am't carried for'd			$7,182 81	Am't carried for'd	$18,126 84

Exhibit "F"—Continued.

1877.	602	Am't bro't for'd		$7,182 81
April	13	To cash p'd J. M. Latta, trustee, to pay six months' int. on $50,000, sqr. 156		2,000 00
	"	To commission on sale sub 34, sq. 156		265 00
June	12	To commission for getting release (Gillet), sq. 134	$5 00	
		To cash for recording release (Gillet), sq. 134	1 25	
				6 25
	16	To cash, Evans & Bro., % grading		600 00
	30	To cash, Evans & Bro., % grading	700 00	
		To cash, Morsell (measures)	5 00	
				705 00
July	2	" " p'd telegrams to Latta		1 70
	6	To cash p'd int. on Riley note, six month-, to Nat. B'k Rep.		270 00
	9	To cash p'd T. Lubey, water tax on—		
		Sqr. 66, lot 3, 4, 5, 3d inst.	142 26	
		" 93, lot 14, 2d inst.	64 27	
		" 93, lot 1, 15, 16, 17, 4th inst.	157 15	
		" 115, lot 11, 4th & 5th inst.	64 47	
		" 115, lots 5 to 10, 4th inst.	259 46	
		" 151, S. 139 to 149, 3d. inst.	101 32	
		" 151, S. 115 to 138, " "	179 63	
		" 151, S. 17, 18, 19, 23, 24, 27 to 38, 1st inst.	118 32	
		" 153, lots 7, 8, 9, 10, 11, 12, 4th inst.	222 28	
		" 158, of 21, 1st inst.	13 63	
		" 158, lot 3, 1st inst.	47 69	

		Am't bro't for'd		$18,126 84
1877.				
July	2	By cash, rent rec'd from sq. 92		20 00
	9	" " rec'd from J. M. Latta		1,000 00
Aug.	1	" " " " rent sqr. 92		20 00
Sept.	3	" " " " " " "		20 00
Oct.	1	" " " " " " "		20 00
Nov.	1	" " " " " " "		20 00

		" 195, " 11, 12, 13, 4th inst.	78 10	
		" 195, " 25, 3d inst.	23 72	
				1,472 30
	14	To cash p'd Evans & Bro. % grading		500 00
		To commissions for attending to taxes & grading		100 00
	17	To cash p'd Evans & Bro. % grading		500 00
	20	To copy of deed of trust & certificate, sq. 151		5 50
	24	To cash p'd J. M. Latta, trustee, % grading sq. 156		263 19
	29	To S. T. G. Morsell (measures), % grading		59 51
Oct.	1	To cash p'd N. L. Jeffries for deposit on sqr. 151		1,000 00
	5	To Republican, bill advertising		42 00
	9	To cash p'd N. L. Jeffries, bal. 1st paym't, sq. 151		1,500 00
Nov.	2	To cash p'd J. M. Latta, trustee		80 00

604 & 605 DR. *Thomas Sunderland in Ac. Current with Kilbourn and Olmstead.* CR.

1877.				1876.			
Jan'y 6	To cash p'd J. M. Latta, trustee, to pay Riley int., sq. 67		$270 00	Dec. 30	By balance of % with Kilbourn and Latta, as per account current, assumed by us		$16,209 01
Feb'y 12	To cash p'd, 1st ½ gen. tax—			June 1	By cash rents collected from sq. 92 to date		199 00
	Sqr. 67, 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, & 19	$135 95					
	Sq. 68, 2, 3, 15, 16	27 76					
	" 69, 16 & 17	15 27					
	" 92, all	159 49					
	" 97, of 9	3 53					
	" 138, of 1, 3, & 4	145 83					
	" 153, all	208 85					
	" 177, S. E & F	9 79					
			706 47				
July 6	To cash p'd Nat. B'k Rep., 6 mo. int. on $9,000, sq. 67		270 00				
9	To cash p'd, water-main tax, sqr. 153, 7, 8, 9, 10, 11, & 12, 4th inst		222 28				
1878.							
June 1	To cash p'd repairs house, sq. 92		10 00				
	Balance		15,344 41				
			$16,823 16				$16,408 01

606a & 606b DR. *Thomas Sunderland in Account Current with James M. Latta, Trustee, from Jan'y 1, 1877, to Sept. 28th, 1878.* CR.

1877.				1877.			
Jan. 3	Paid for recording deed of trust on lots in square 176, sold to Thomas Young		1 50	Jan. 3	By cash rec'd for rent of square 92		20 00
Apr'l 23	Paid 6 mo. int., to date, on note of 7,043.40, sq. 92		211 30	Feb'y 2	By cash rec'd for rent of square 92, Jan'y		20 00
May 31	Paid 2d half of gen'l taxes of 1876-'77		706 57	M'ch 2	By cash rec'd for rent of square 92, Feb'y		20 00
June 5	Paid % of principal of note of $21,500, sq. 153	6,500 00		Apr'l 2	By cash rec'd for rent of square 92, Mar.		20 00
"	Int. on same to 14th inst., sq. 153	752 50		10	By cash rec'd for sale of 20 shares of Metro. R. R. stock, at 21		420 00
			7,252 50	May 1	By cash rec'd for rent of sq. 92, for Ap'l		20 00
July 19	Paid 3 mo. int. on note of $7,043.40, sq. 92		140 86	June 2	By cash rec'd for rent of sq. 92, for May		20 00
Aug. 29	Paid water-main tax—			1878.			
	Lots 9 to 12, sq. 67	131 19		Ap'l 22	By cash rec'd for sale of p't of lot 8, sq. 138, to Wm. M. Galt		2,148 75
	" A to N & 3 to 7, sq. 92	231 99		May 23	By cash rec'd from loan of Gen'l Cutter on p't 138 & lot 2, sq. 92		4,000 00
	" 3 & 4, sq. 138	167 11					
			530 29	1877.			
"	Paid gen'l tax of 1876-'77 on lot 12, sq. 570		34 42	Nov. 2	By cash rec'd from Kilbourn & Olmstead, as per their account current		80 00
Nov. 2	Paid 3 mo. int. on note of $7,043.40, sq. 92		140 86				
Dec. 30	Paid care & management of property as trustee		1,115 00	1878.			
1878.				June 22	By cash rec'd for sale of 28 feet front of square 138 to S. P. Carter		3,000 00
Jan. 4	Paid Wm. R. Riley, int. to maturity on note of $9,000 on square 67		274 50		To balance %		4,245 16
5	Paid 6 mo. int. on bal. of note, $15,000, sq. 153		600 00				

"*Exhibit L*"—Continued.

1878.					
Jan.	23	Paid 3 mo. int. on note of $7,043.40, sq. 92		140 86	
Feb'y	15	Paid for telegrams		2 00	
Apr'l	16	" " diagrams, sq. 138		2 50	
	22	" " surveying, sq. 138		2 50	
	22	" " water-main tax, sq. 138	64 73		
	"	" " gen'l tax, sq. 138	306 23		
	"	" " ack'g deed, sq. 138	50		
				371 46	
	"	" " examining title, sq. 138		35 00	
	23	" 3 mo. int. on sq. 92		140 86	
	"	Paid first $\frac{1}{2}$ gen'l tax 1877-'78 on sq. 92		175 43	
	"	Paid Fitch & Fox commission on loan of $4,000 from Gen'l Cutter on pt. sq. 138 & lot 2, sq. 92		82 50	
	"	Paid for exam'g title of sq. 138 to date		15 00	
June	20	Paid care & management as trustee		557 50	
	28	Paid for moving wall, sq. 138		43 50	
July	6	Paid Wm. R. Riley 6 mo. int., sq. 67		270 00	
	10	Paid W. W. Corcoran 6 mo. int., sq. 153		600 00	
Aug.	7	Paid Thomas Sunderland		500 00	
June	22	Paid Fitch & Fox comm'n on sale to Carter		67 00	
				14,013 91	14,013 91

607 In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and C. J. HILLYER
vs.
HALLET KILBOURN, JAMES M. LATTA, and J. F. OLMSTEAD. } Equity No. 7764.

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Pages.

J. F. Olmstead, direct
Curtis J. Hillyer, direct (recalled)
Thomas Sunderland, direct (conti'd)
" " cross "
" " " (conti'd)
" " " "
" " redirect

WM. T. S. CURTIS,
Notary Public, D. C., and Special Examiner.

608 *Deposition of J. F. Olmstead, Taken on Behalf of Complainant upon this the Tenth Day of January, A. D.* 1882.

Present: C. J. Hillyer and J. A. Ralston, for complainants; J. M. Wilson, for defendants.

Direct examination by C. J. HILLYER:

1 Q. Your name?

A. J. F. Olmstead.

2 Q. Were you a member of the firm of Kilbourn and Latta in 1872?

A. I was.

3 Q. Was there a letter received by you in May, 1872, written by Mr. Latta and dated at Altoona, Pennsylvania?

A. I do not know whether it was written to me or not, but there was a letter received by the firm, and a copy of all that portion of such letter as related to the business of the firm is in evidence in the case of Kilbourn & Olmstead against Latta.

4 Q. Have you in your possession or under your control the original of that letter?

609 A. I think I have, although I am not positive about it.

5 Q. Can you produce it?

A. I cannot produce it this morning. I have just returned to the city from practically five weeks' absence. I arrived here yesterday morning, received this summons last night, and I have had no time to look for it at all. However, it is in evidence in the other case.

6 Q. Have you looked for it?

A. I have not.

7 Q. Do you know where your letters are kept, or not?

A. I do not.

8 Q. Do you know where to look for that letter?

A. No; I do not. We have three or four places to keep letters. I keep a file of letters as they are received, but I have taken letters from this file and placed them among letters and papers in other cases.

9 Q. Did not you receive a subpœna, issued by order of the court, requiring you to bring with you that paper?

A. I did.

10 Q. Did not you suppose it was obligatory upon you to make some search for it?

A. I have stated why I did not do so.

11 Q. I understood you to say that you made no search?

610 A. I stated that I had no time in which to do so. I only got the subpœna last night. I have a great deal to attend to, and Mr. Evans' death has cast a largely increased business upon my hands.

12 Q. How long will it take you to ascertain whether you have that letter or not?

A. I do not know. It is all in evidence—that is, so much of it as is pertinent to this or any other case.

13 Q. Perhaps you are not the best judge as to how much of it is pertinent; at least you are not the person to judge now?

A. I flatter myself that I am.

14 Q. Will you produce the letter?

A. I will look for it.

15 Q. How much time do you require?

A. I am not sure; I cannot tell.

16 Q. If you have it can't you find it in an hour?

A. I do not know whether I could or not.

17 Q. Will you look for that paper and produce it here by three o'clock this afternoon?

A. I cannot do it by that time. I have an engagement in court at eleven this morning, which would preclude my doing so. I shall produce it as quickly as possible if, upon consultation with my attorney, it is desirable to do so.

611 18 Q. I wish you would see to it at once.

A. I cannot do it now.

19 Q. Then you refuse to do it now?

A. I say it is impossible for me to do it now.

20 Q. Your office is how far from here?

A. A couple of squares.

21 Q. If you have it in your office could you not get it here within a reasonable time?

A. I do not know whether it is in my office or not.

22 Q. Do you think it is there?

A. I presume it is, but it might be in the hands of my attorney.

23 Q. I will now give you time to go to your office, get the letter, and produce it, and wish to know whether or not you refuse to do so?

A. Well, I do not know but what I might as well use up the time doing that as anything else, but probably I shall not find it.

24 Q. I do not know that there is anything else which takes precedence.

A. That may be, but you may not be informed so well upon this subject, and I would suggest that, in the meantime, if there is any other matter which you would like to go on with now we might proceed with the examination.

612 A. I presume I have the letter, but I do not know that I shall produce it.

25 Q. Either bring the letter or refuse to bring it, stating that you have it but do not care to produce it. Please do one of two things, that we may understand precisely what your position is.

A. There is nothing in the letter pertinent to this case which was not produced in the other case. You have seen the copy in the other case, and that is all that will be produced in this. The remainder is private matter.

26 Q. Well, suppose you get the letter and decline to produce it.

A. I will produce anything pertinent to this case—that is, so far as reasonable.

27 Q. Have you in your possession the books of accounts of the firm of Kilbourn and Latta, containing entries of transactions of that firm with Sunderland and Hillyer and Stewart or Sunderland and Hillyer in the year 1872 in reference to the purchase of real estate?

A. I have. I think that all the entries have been gone over by you in your examination of Mr. Bull, who was our former cashier and book-keeper, in a similar case to this, and I produced them in the same way that I now offer to produce those at my office—

613 a place where they are safe and under fire proof.

28 Q. Will you produce those books here?

A. It is practically impossible to do it. Those books have been wanted in several cases before now, and it has been always—sometimes mutually agreed and sometimes otherwise—concluded that they should be examined in the office, where they could be taken out of the safe and put back again and not necessitate the entire disarrangement of a business that has been running for sixteen years.

29 Q. Will you produce the books for examination if the examination is adjourned to your office?

A. I will produce anything at my office pertinent to this case.

30 Q. I ask you will you produce these books? I do not ask you to decide what is pertinent to this case.

A. I will produce anything pertinent to this case at my office.

31 Q. There was a suit, was there not, of Kilbourn and Olmstead *vs.* J. M. Latta commenced some two years ago, which is now pending in the supreme court of the Dist. of Columbia?

A. There is such a suit.

614 32 Q. And in that suit Mr. Latta was examined as a witness and his deposition taken?

A. It was.

33 Q. Is the paper which I hold in my hand and call your atten-

tion to, commencing at page 20 and ending at page 212, the deposition of Mr. Latta?

A. Well, I have not examined it. I should judge from the appearance of it that it is the deposition, or a copy of a deposition, of Mr. Latta. I am surprised it is not in court.

34 Q. I ask you if you know the signature of Mr. Latta?

A. I do.

35 Q. Is that it (pointing to signature at end of deposition)?

A. It is.

36 Q. And it is attached to this deposition, is it not?

A. It is.

Obj.—Mr. WILSON: I object to this deposition being offered in evidence, because the same is immaterial and irrelevent and otherwise incompetent, for there is no evidence that it is the original deposition taken in the case.

37 Q. I ask you, Mr. Olmstead, if you are familiar with their deposition?

615 & 616 A. I have not looked at it for three years.

38 Q. Is that the deposition of Mr. Latta?

A. I would not like to say whether it was or not.

By Mr. WILSON:

39 Q. What is the character and extent, if I may use that word, of the books and papers that have been referred to in this examination, as far as it has progressed?

A. As I read that subpœna, it practically calls for the contents of that safe.

40 Q. How bulky are these books and papers?

A. I should think the books would probably weigh 500 pounds, and I think the paper, without knowing exactly which ones might be called for, as they are one of the files, would fill a bushel basket. I do not think there are many papers that would be necessary; but from that subpœna I am unable to say what would be called for.

41 Q. Have you conveniences in your office in this city for taking testimony, where it can be conducted privately without interruption from the public?

A. I have. It has been the custom in all these suits in which Latta is involved to go there whenever it was desired to examine the books and papers, with one exception.

617 At this point Mr. OLMSTEAD said: If there is anything in my answers that implies a refusal to produce anything connected with this case I disclaim any intention of conveying that impression.

The further taking of this deposition was continued until Wednesday, the 11th day of January, 1882, to meet at the office of Mr. J. F. Olmstead, New York avenue, Washington, D. C., at seven o'clock p. m.

Adjourned.

WM. P. S. CURTIS,
Notary Public, D. C.

WEDNESDAY, *January* 11, 1882.

Testimony resumed at the office of Mr. J. F. Olmstead, pursuant to last adjournment.

Present: C. J. Hillyer & J. H. Ralston, for complainants; J. M. Wilson, for defendant, and Enoch Totten, for J. F. Olmstead.

Direct examination by Mr. HILLYER resumed:

42 Q. Have you the letter, Mr. Olmstead, written by Mr. Latta from Altoona, Penn., to which your attention was called yesterday in the examination?

618 A. I have.

43 Q. Will you produce it?

A. I have already stated in my examination that everything in that letter which is not private matter and which is pertinent to any controversy has been produced and is in the testimony which you have. Beyond that I decline to produce.

44 Q. I understand you, then, that you decline to produce the letter?

A. I decline to produce the private business of the firm of Kilbourn and Latta, under the advise of my counsel.

45 Q. What I want to know is simply whether you refuse to produce the letter. That is the question I want answered.

A. I have no other answer to make.

46 Q. Will you produce the letter?

A. You have my answer.

47 Q. Are you willing to produce it or not?

A. I have stated.

48 Q. I wish to understand distinctly whether you refuse?

A. Perhaps it would be desirable to read my previous answers.

The questions and answers immediately preceding were then read by the stenographer.

619 49 Q. I call upon you now to produce the letter, and I wish to know distinctly whether you will do so or whether you will not.

A. As all the matters in that letter which are pertinent in the case are of public record, I decline further to produce that letter. The balance of the letter is private matter and was excepted by all parties to other controversies of which this case is simply an auxiliary part, and I decline to produce it now.

50 Q. Have you the book of original entries of the firm of Kilbourn and Latta containing the accounts of that firm with those who had business with it in the year 1872?

A. I have.

51 Q. Will you produce it?

A. I will produce anything that is called for specifically in this or any other controversy in which any parties to the controversy may be interested; no further.

Mr. TOTTEN: What do you want, Mr. Hillyer? You shall have anything that pertains to the controversy in question, but you shall

not have the books relating to the entire history of the business of the firm of Kilbourn and Latta unless the court so directs. There is a suit pending by these same plaintiffs against Kilbourn and Olm-
620 stead, members of the firm of Kilbourn and Latta, involving the same subject-matter or controversy, in which the testimony has not been closed and which is about to proceed in a few days. We do not propose to allow a general overhauling of the books and accounts of Kilbourn & Latta by these gentlemen for any purpose. Anything that relates to the controversy here or the one I have alluded to shall be disclosed in full at the proper time. If these gentlemen will specify the particular pieces of property and transactions about which they want entries in the books they shall have them if it is proper and right to produce them; farther than that we will not go, unless by the direction of the court of chancery.

52 Q. This book of which I have spoken contains entries of transactions between the firm of Kilbourn & Latta and Sunderland, Hillyer & Co., does it not?

A. It does.

53 Q. In reference to real property?

A. It does.

54 Q. Will you produce the book?

A. I will produce the account with Sunderland, Hillyer & Co., with Sunderland & Hillyer, with Thomas Sunderland, and with C. J. Hillyer.

55 Q. My question is, Will you produce the book of original entries?

621 A. I will produce the book for the inspection of those accounts that I have specified.

Mr. HILLYER: Very good. I wish to inspect no other accounts.

The WITNESS: What date do you call for?

56. Mr. HILLYER: I want the book of original entries for the months of May & June, 1872.

A. This is the book of Kilbourn & Latta for the time desired. (Witness here opened the book and placed it upon the desk in front of him.)

57 Q. I wish you would turn to the first entry in that book which relates in any way to the purchase of square 115, in this city.

A. The entry there is the real estate account of Sunderland, Hillyer & Co., square 115, $65,000. The next entry is Sunderland, Hillyer & Co., debtor for encumbrance for the note of J. M. Latta, trustee, dated May 25, '72, payable on or before six years, interest 6 per cent., payable semi-annually, $32,000; two notes, $6,500 each, dated May 30, '72, payable one & two years, six per cent. interest, payable semi-annually, $13,000.

58 Q. Have you read the copies of entries as they appear in the book?

A. I have read entries chargeable to the account of Sunderland, Hillyer & Co.

59. Mr. TOTTEN: Word for word:

A. Word for word; charged the square and credited
622 with amount of notes given by J. M. Latta, trustee, who was trustee for them, and their account is charged with the balance left.

60 Q. Do the two notes amounting to $13,000, entered in your book, show to whom those notes were payable?

A. The entry does not show.

61 Q. To whom were they payable?

A. I know that Kilbourn and Latta got the money. It might have been payable to the firm or may have been payable to somebody else. I do not know about that. I know the firm got this $13,000.

62 Q. Have you read all the entries in that book, say, for the month- of May and June, 1872, relative to the purchase of this square?

A. Well, as that is an open entry, I will look and see if there are any others, but I presume not, for that looks like a squared account. I presume there are no others.

63 Q. Give the date.

A. May 30th, 1872; I do not think there are any others. I do not see any.

64 Q. You know of no other?

A. I know of no other; no, sir.

65 Q. Have you a book containing original entries of the purchase of property of the firm of Kilbourn & Latta or by the firm of
623 Kilbourn, Latta & Olmstead during the months of April, May, and June, 1872?

A. I have no other book except this.

66 Q. Did the firm of Kilbourn and Latta during those months make purchases of real estate?

A. It did.

67 Q. Were there any accounts of those purchases kept?

A. They were, I think, all kept. I do not know of any excepted.

68 Q. Were they kept in a book?

A. Every entry that I remember now. It is simply going back for 9 years. Every entry during those months is in this book.

69 Q. Did you during those months have a book separate from this book for keeping purchases made by Kilbourn & Latta or Kilbourn, Latta & Olmstead?

A. I did not.

70 Q. Have you an account in that book of the purchases made by the firm of Kilbourn & Latta or Kilbourn, Latta and Olmstead?

A. The account of the firm was kept in this book, as far as I know. The whole of the transactions of the firm during those months is in this book.

71 Q. You do not seem to understand my question. The stenographer will re-read the question.

The question was re-read.

A. If I have not answered the question in full, then I do not comprehend it.

624 72 Q. What I wish to know is whether, to your knowledge, an account was kept in any book of all the purchases of real estate made by the firm of Kilbourn & Latta or by Kilbourn, Latta & Olmstead during the months of April, May, and June, 1872?

A. There were no books kept by the firm whatever except this set—this journal, ledger, etc. This is the book of original entries.

73 Q. Did you yourself keep an account of purchases made by the firm during those months?

A. I did not.

74 Q. Did you ever enter the purchases made during those months by that firm upon any book or paper?

A. I presume I did.

75 Q. Do you know?

A. I presume I did.

76 Q. Where did you enter them?

A. I do not know whether in the yearly diary or whether on paper or what I did. I kept memorandums, of course. As an individual member of that firm, I kept memorandums of business to refresh my memory.

77 Q. Did you subsequently to that time put down in writing, either in a book or upon a paper, an account of the transactions or purchases by the firm of Kilbourn & Latta during
625 those months?

A. I did not.

78 Q. Do you know of a suit pending in this District in which Kilbourn & Olmstead are plaintiffs and J. M. Latta defendant, in which the plaintiffs claim in their complaint that the defendant Latta made profits upon purchases and sales of real estate which the plaintiffs in that suit were entitled to share?

Mr. WILSON: The question is objected to because the papers in the case are the best evidence of what is claimed by the plaintiffs in that case and the best evidence of the subject-matter of the controversy between the parties in that case, and because the matters inquired of have no relevancy whatever to the subject-matter of the controversy in this case.

A. Mr. Kilbourn and I have a suit against Mr. Latta for some matters of difference, which is of public record, and I am unable to say whether it involves anything connected with this case or not. I don't think it does.

79 Q. Is the subject-matter of the suit substantially what I have stated in asking you the question?

626 Mr. WILSON: That question is also objected to, for the reason that the papers in that case show what is the subject-matter of that suit and the question calls for testimony that is wholly irrelevant to the matter in dispute in this case.

A. That is a legal question, which I refer to my attorney, as I am unable to answer it.

80 Q. Were you examined as a witness in that case?

A. I think I was; but it has been so long ago that.

81 Q. Do you know whether you were or not?
A. I think I was.

Mr. TOTTEN: The record will show whether or not.

Mr. WILSON: I object to the question, because the record is the best witness of the fact.

82 Q. Did you sign a diposition in that case?
A. I do not know whether I did or not. I think I did.
83 Q. If you did, how long ago was it?
A. Well, that case was begun in 1877.
83½ Q. Have you any idea when you were examined?
A. Indeed I have not. I don't think I have thought of the case in a year.
84 Q. Could you tell your deposition in that case if you were to see it?
627 A. I think I could.
85 Q. I wish you would look at this book (handing witness record in case of Kilbourn and Olmstead *vs.* J. M. Latta)—it purports to be the record copy of a deposition by you in that case—and see whether it is correct that the deposition is yours.
A. Do you desire me to examine that whole testimony?
86 Q. I wish you to examine it sufficiently to satisfy yourself that that is your deposition.
A. Well, I am sure that it is marked 5919 equity, Kilbourn and Olmstead against J. M. Latta, complainants' testimony. I presume it contains my deposition, as I see here on the 24th June, 1878, appears "John F. Olmstead duly sworn, and testified as follows." I presume this is my testimony.
87 Q. Did you testify in that deposition that there was an account kept of purchases of Kilbourn and Olmstead and Latta separate from the account kept of the business transactions of Kilbourn, Olmstead and Latta with third persons?

Mr. WILSON: That question is objected to—first, because it is leading and, second, because the deposition itself shows what was testified to and is the best evidence.

A. I have not examined this testimony, and I have testified
628 that the transactions of the firm of Kilbourn and Latta were kept in the book that has been called for, and I am satisfied this testimony is correct, whatever it says.
88 Q. Do you remember whether you did or did not state in that deposition that there was an account kept separately from the other accounts of the real estate transactions in which the firm of Kilbourn and Latta or Kilbourn, Latta and Olmstead were interested?
A. The firm of Kilbourn and Latta was the firm of Kilbourn, Latta and Olmstead, and I do not understand the difference that is made by Colonel Hillyer in designating that *or* two firms or anything else. The books of the firm I have produced. That firm was Kilbourn, Latta and Olmstead.
89 Q. The stenographer will please re-read the last question.

The last question was re-read.

A. I do not know any other answer than that given. I will state here that I am willing to give any answer fully pertaining to anything in this matter. I do not understand the questions of Col. Hillyer and I do not understand what they refer to. My testimony is full here in the case 5919, which has been referred to. I have
629 not read it, and do not know any other answer that I can give in regard to it.

90 Q. I present you now with what purports to be a copy of your deposition in the case I have referred to, and call your attention to page 12, question 19, and to what follows that question down to and including the word "bought," on page 14, and I ask you to look at that and see if you gave that testimony in that case.

Mr. WILSON: I object to the question and to the witness answering it, for the reason that the paper itself shows what the witness did testify to, and for the additional reason that the defendant is not in any way responsible for or bound by any testimony that the witness may have given in the deposition referred to, and the same is immaterial and irrelevant in this case.

A. I decline to make any further answer.

91 Q. Did you furnish in that case for use, as testimony for the complainants, yourself, and Mr. Kilbourn, a list of the property which had been purchased by the firm of Kilbourn and Latta?

Mr. WILSON: The question is objected to because it is illegal and irrelevant, for the record shows itself what was furnished, and
630 because complainants in this case, having produced the witness, have no right to pursue such an examination as is now being followed.

A. I decline to answer; the record shows for itself.

92 Q. Do you decline to say whether or not you have made a list of the property?

A. I say that the record in that case shows for itself, and I decline to answer that question further in regard to that case.

93 Q. Did you ever make a list of property which was purchased by the firm of Kilbourn and Latta?

A. The record in that case shows what I made.

94 Q. I am not referring to the record in that case.

A. I might have made a list; I do not recollect.

95 Q. I understand you, then, to say that you do not now know whether you ever made what purported to be a list of the property purchased by the firm of Kilbourn and Latta?

A. I made whatever is shown in that record; I have not examined that record for several years, or rather for some time.

96 Q. My question is easily understood, and I will make it sufficiently——

631 Mr. TOTTEN (interrupting): I protest against that.

Mr. HILLYER (resuming): And I will make it sufficiently distinct so that there may be no excuse or misunderstanding about it. I wish to know whether you now recollect of ever having made

what purports to be a list of the property—of the real estate purchased by the firm of Kilbourn and Latta?

Mr. WILSON: I object to that question because it is of no consequence whether he ever made a list or not, and it is not competent evidence against the defendant in this case if he did make a list.

A. I decline to answer anything further in regard to that case.

97 Q. I am asking you nothing in regard to that case in this question, and I desire that you should answer the question which I ask you according to its terms.

A. I have no answer to make.

98 Q. Do you refuse to answer?

A. I have stated all that I have to in regard to that matter.

99 Q. If you ever did make a list of the real estate purchased by the firm of Kilbourn and Latta, and if you made that list within the last three years, from what source did you obtain the data from which it was made?

632 Mr. WILSON: The question is objected to because the defendant in this case is not responsible for or bound by any list that may have been made, nor can he be affected by any such list, if made, and the answer calls for testimony that is illegal and incompetent.

The question was re-read.

A. Well, that is somewhat like Dundreary. If he had a brother, would he like cheese?—and I do not know whether he would or not.

100 Q. Is that the only answer you have to make?

A. It is. I am sure I see nothing in it.

101 Q. Do you know of any book or any paper, now in existence or which has been in existence heretofore, containing the date from which a statement of the purchases of real estate made by Kilbourn and Latta could be obtained?

A. I have stated that I was willing to produce any book, paper, statement, letter, account, or anything pertaining to this case, and the record in that case, 5919, is made up, and I do not know of any further answer I have to make in regard to it.

102 Q. Do you refuse to tell whether or not you know of the existence now or heretofore of any book or paper showing purchases of real estate made by the firm of Kilbourn & Latta?

Mr. TOTTEN: I object to that because it is not material.

633 A. I decline to answer.

103 Q. I show you now, Mr. Olmstead, an account which purports to have been made and presented by yourself, when examined as a witness in the case, to which I have referred and which purports to contain an account of the purchases made of real estate by the firm of Kilbourn and Latta between the dates of June, 1871, and November 8th, 1875, and I ask you to examine that account and state to me whether it is correct.

Mr. WILSON: The question is objected to for the reason that the defendant in this case is not bound by it or responsible for any ac-

count that was made up by the witness or any list that was made up by the witness in the controversy between Kilbourn and Olmstead, as complainants, and Latta, as defendant, in the case which has been referred to, and because the books containing the account of the purchases made by Kilbourn & Latta are better evidence of what purchases were made than any list that is made up by the witness.

A. I decline to answer anything further in regard to the case of Kilbourn & Olmstead against James M. Latta.

634 104 Q. Do you decline to answer the last question which I asked—that is to say, do you decline to examine the account which I have presented and to tell me whether or not it is correct?

A. I repeat my last answer.

105 Q. Have you any books or papers in your possession or to which you have access from which you can make a statement of the purchases of real estate made by the firm of Kilbourn and Latta between the dates of June, 1871, and May, 1875?

Mr. TOTTEN: That is not a proper thing for you to call for.

Mr. HILLYER: Do you make that an objection?

Mr. TOTTEN: I am willing to have that go down. We are willing to show or give any entries of any property in which these complainants are interested, and nothing else.

A. I decline to answer.

106 Q. Have you any book or paper in your possession or under your control containing any entry or statement relating to the purchase of square 115 by the firm of Kilbourn and Latta?

Mr. TOTTEN: Do you mean other than he has produced?

Mr. HILLYER: The question which I have asked is very plain.

635 A. I have read the entries of the sale of square 115 to Sunderland, Hillyer & Co., I think it was. Beyond that I have nothing to say.

107 Q. You were a member of the firm of Kilbourn and Latta in 1872, were you not?

A. I was.

108 Q. Continued so up to December 30th, 1876?

A. I did.

109 Q. Has a suit been commenced against you by the complainants in this case?

A. There has been, as I understand it. It is identical with this suit.

110 Q. That suit is still pending, is it not?

A. I think it is.

111 Q. And testimony for plaintiff or some of it has been taken, has it not?

A. It has.

112 Q. You answered in that suit, did you not?

A. I answered the bill of complaint.

113 Q. In that answer you denied the charges that were made in the complaint, did you not?

Mr. WILSON: The question is objected to. The answer made by the witness in that case will show what it contains and is the best evidence.

A. I made my answer to that bill and it is of public record.

114 Q. What I wish to ascertain is whether you are not
636 now in the position of litigant, defending against the same character of complaint which was made in this case?

Mr. TOTTEN: That is a question of law for lawyers and judges to decide and not for the witness, and I object to it.

A. I am unable to answer the question.

Mr. WILSON: I add the additional objection that the record in that case will show for itself, and is the best evidence.

The further taking of this deposition was continued until Tuesday, the 17th day of January, 1882, at seven o'clock p. m., to meet at the office of J. F. Olmstead, New York avenue, Washington, D. C.

Adjourned.

WM. T. S. CURTIS,
Notary Public, D. C.

Met, pursuant to above adjournment, this the 17th day of January, 1882, at seven o'clock p. m., at office of J. F. Olmstead, No. 1428 New York avenue, Washington, D. C.

Upon agreement of counsel the examination was adjourned until Wednesday, Jan'y 25, '82, at 7 p. m., at office of J. F. Olmstead.

637 Met, pursuant to above adjournment, on this the 25th day of January, 1882, at time and place above noted.

Direct examination continued:

By Mr. HILLYER:

115 Q. I understand, Mr. Olmstead, that you have here the book of original entries of the business of Kilbourn and Latta for the year 1872?

A. I have.

116 Q. Is it the same one which you produced and had here the other evening?

A. It is, sir.

117 Q. I wish you would get it, if you please.

A. I will.

(The witness, here leaving his seat, procured the book referred to and returned with the same.)

118 Q. The book which you have now before you contains, if I understand you, the original entries of the business of Kilbourn and Latta in the year 1872?

A. It does.

119 Q. Is it the journal?

A. It is one of them.

120 Q. Is there any other journal for that year?

A. Not for that year; no.

638 121 Q. I ask you to produce that book to the commissioner for the purpose of examination, and that the complainants here may have such extracts copied from it as they consider relevant to the case or as shall be found relevant.

A. As I have stated heretofore, I am willing to produce anything in this book or any other book that may be called for pertinent to this case, but this book contains the business of others besides the complainants in this case, and I must decline to produce it in whole. I will say further that the complainants in this case have in their possession, made by an employee of theirs, a certified copy of every transaction contained in this or any other book relative to the business of Sunderland and Hillyer, Thomas Sunderland, or Sunderland Hillyer and Stewart.

122 Q. If you decline to produce the whole book I will ask you to produce to the commissioner for the purpose of examination and of making extracts of that portion of the book which contains the account of the transactions of the firm of Kilbourn and Latta during the months of May and June, 1872?

639 A. The accounts of Sunderland & Hillyer during that period are mixed in with other accounts of other parties, in which they have no business and which I must decline to expose to their or any other disinterested parties' investigation; and I repeat again that I am willing to give them all they ask for in any of these books connected with their business.

128 Q. If you decline to produce that portion of the book embracing the business of these two months I will ask you to produce to the commissioner the accounts of the transaction relating to the purchase of square 115, which was read by you the other evening. I ask for its production for the purpose of being examined and that the context of that entry which you read may be examined.

Mr. TOTTEN: What do you mean by context?

Mr. HILLYER: I would tell you in a moment, Colonel, if I thought you did not know, but I suppose you know as well as I do. Did you ask the question seriously?

Mr. TOTTEN: I did.

Mr. HILLYER: I mean by the context the two or three pages of entries or the entries upon the journal for two or three days upon our side of that account.

640 The WITNESS: I have read from this book the entries of that account, so far as it pertains to Sunderland & Hillyer and the commissioner can look at these entries if you desire that he should verify them.

124 Q. I desire that the entries should be produced to the examiner, and that the examiner be permitted to have a copy made of such extracts—and — made evidence in the case—as shall be found relevant. Are you willing to do that?

Mr. WILSON: That allows the commissioner to determine what is relevant, and I object to it.

Mr. HILLYER: I have put it in that form—I hope I am not misunderstood. I think we have the right to determine in the first instance. As I understand, the objection is as to the relevancy. I ask to have a copy made of such extracts from those entries as the counsel shall deem to be relevant testimony in the case.

A. I decline to produce the book for that purpose.

125 Q. I ask you now to produce to the examiner the entries, which were referred to by you in your previous examination, with reference to the purchase of square 115, for the inspection of the counsel for the plaintiffs.

Mr. TOTTEN: Do you mean the same thing that he recited
641 in the last examination? Do you want it done over?

Mr. HILLYER: I do not want it done over; I want to see the book.

A. I decline to produce the book, and I will say that the reason I am declining to produce it is that it is impossible to produce it, it being a daily journal, and it cannot be inspected without opening to him business that does not belong to him in any manner.

126 Q. Is there or is there not an entry in that book purporting to state in a book-keeping way the transaction of purchase in the month of May, 1872, by the firm of Kilbourn & Latta, of square 115?

Mr. TOTTEN: You mean the original purchase from the association?

Mr. HILLYER: Yes, sir; that is what I mean.

A. There is.

127 Q. Will you produce to the examiner that entry for the purpose of examination by counsel for the complainants?

A. I will not.

128 Q. Is there an entry in that book respecting a charge for commissions by the firm of Kilbourn and Latta against an institution for the education of colored youth, the owners of this property, for the sale of the property?

642 A. As that is a matter which belongs to the firm of Kilbourn and Latta and the Institution for the Education of Colored Youth, I decline to produce it. I do not know whether it is there or not.

129 Q. Is there an entry in this book relating to the purchase by Kilbourn & Latta of lot 17, in square 158, during the month of May, 1872?

A. There is an entry in that book of the purchase of that lot by Sunderland & Hillyer. I do not know whether in the month of May, 1872, or not, but I presume that is the time.

130 Q. Will you please answer the question which I ask, which will be re-read to you by the commissioner?

The question was re-read.

A. I do not know whether there is or not; I presume there is.

131 Q. Will you produce the book to the commissioner for the

purpose of an examination by him and by the counsel for complainants in reference to the existence of such entry, and that the same may be copied for introduction as evidence in this case?

A. I decline to produce this book for the examination of the complainants in this case, so that they need not ask any more
642*a* questions in regard to its examination by them, the complainants of this case being the attorneys.

132 Q. Is there any entry in that book relating to the purchase by the firm of Kilbourn and Latta or by the Real Estate Association, of which you have spoken, or by the party by whom that square was sold to Sunderland, Hillyer and Stewart?

A. What square?

133 Q. Square 155.

A. Considering these questions impertinent, I decline further to answer any question if there is this or that in that book; and I will repeat my proposition to produce anything in these books that related to these complainants, but not for their inspection, as that would be to give them other people's business, which is as sacred to me as theirs was when I was transacting it.

134 Q. How do you propose to produce them?

A. I suppose you would point out the legal way.

135 Q. I have pointed out what I thought was the proper way. I understand you to propose to produce them, but not for the inspection of counsel for the complainants. I therefore ask you in what way and for what purpose do you propose to produce them?

643 A. You have had your own employee copy an account current, which, I think, was verified by a notary public, of all the accounts in these books relative to your business.

136 Q. I understand you, then, that you undertake to decide what portions of these books relate to our business and what portions do not? Is that correct?

A. I decline to answer.

137 Q. Do you decline to answer the several questions which you have refused to answer upon the advice of the attorney for the defendant in this case or upon the advice of your own attorney?

A. I decline to answer that.

Mr. WILSON: If the question implies that I have been advising Mr. Olmstead in this respect I should like to have it appear that I have not in any way advised him.

138 Q. Does this book contain the original entries in relation to the purchase of real property made by the firm of Kilbourn and Latta for themselves in the months of May and June, 1872?

A. As that is a matter in which you are not interested, I decline to answer.

139 Q. I wish to know whether the refusal to answer the above questions or any of them is made under the advice of the
644 attorney for the defendant in this case or whether it is your own personal objections.

A. Well, as the attorney in this case has stated that he has not

made any objections or has not advised me to decline to answer the questions, I have nothing else to say in relation to my decliuing to answer the questions.

140 Q. Did you make out a statement showing the real estate purchases by the firm of Kilbourn and Latta during the existence of that firm or during any portion of the time of its existence, which was introduced and used as evidence in the case of Kilbourn & Olmstead against Latta, referred to upon the previous examination?

A. I decline to state.

241 Q. Is there in this book the date for making a statement of the purchase of real property made by the firm of Kilbourn & Latta during the year 1872?

A. I decline to state that.

142 Q. I ask you to produce the book for the purpose of inspection in regard to the entries therein relating to transactions of purchases by the firm of Kilbourn and Latta during the year 1872?

A. I decline to do that.

645 143 Q. Have you in your possession or under your control a letter written by Mr. Latta from Goshen, Ind ana, in the month of August, 1872, which was produced by you and introduced in evidence in the case of Kilbourn & Olmstead against Latta, above referred to?

A. I am sure I do not know; I do not know what letter you refer to.

144 Q. Was there more than one letter in that case, introduced in evidence, written by Mr. Latta in the month of August, 1872?

A. The record is the best evidence.

145 Q. Will you state whether you have that letter?

A. I do not know whether I have it or not. I do not know what letter you refer to. I have not examined that testimony for a great while.

146 Q. Do you mean to say that you do not know whether or not you have the original of a letter, which was produced by you and which was introduced in evidence by you in the case I have referred to, written by Mr. Latta?

A. I do not mean to say just that.

147 Q. Have you parted with the possession of any letter that you had at that time, in the last three years, written by Mr. Latta?

A. I do not know whether I have or not.

(At this point the examination was discontinued.)

JOHN F. OLMSTEAD.

646 Subscribed and sworn to this 22nd day of April, 1882.

WM. T. S. CURTIS,
Notary Public.

Direct examination of C. J. HILLYER (recalled):

By Mr. RALSTON:

Q. On the discovery in 1878 of the charge made for care &

management, did you and Mr. Sunderland have a conversation with Mr. Latta upon the subject?

A. We did. We went to meet Mr. Latta at his house and had an interview with him in which I complained quite indignantly against the injustice of such a charge being made, and reminded Mr. Latta of an agreement which I had made with him & Mr. Kilbourn in 1875. Mr. Latta denied that there ever was any agreement on the subject of charge for compensation. He said that he remembered having a conversation about it as I asserted, but that there never was any agreement come to upon the subject. He said that they were entitled to charge for their services what their services were worth, and upon that basis the charge had been made.

647 5 Q. Did you write a letter to Mr. J. M. Latta from Virginia City in December, 1877?

A. I did.

6 Q. Where is the original letter?

A. I presume Mr. Latta has it; I have never seen it since.

7 Q. Have you a copy of that letter?

A. I kept a copy of it for the reason that inasmuch as it touched upon our relations with Kilbourn and Olmstead and Mr. Latta, between whom there was then some disagreement, I desired to show it to Mr. Sunderland, who was at that time in San Francisco, before sending away the original.

8 Q. Will you produce the copy?

A. I will.

At this point the witness handed to the commissioner the copy of letter referred to, and the same is hereunto attached and made a part of this testimony, marked "Exhibit M."

Obj.—The copy of letter was objected to by Mr. Wilson.

(By Mr. WILSON:)

9 Q. Is this the letter referred to, Mr. Hillyer, in the notice that was served upon Messrs. Shellabarger & Wilson, and service acknowledged by them on yesterday?

A. It is.

648 Obj.—Counsel for the defendant here objected to the introduction of the copy of letter at this time, and reserved the right to move to strike it out of the deposition for the reason that the notice having been served on yesterday and Mr. Latta being absent from the city of Washington and counsel, not having the original of such letter in his possession, was unable, pursuant to the notice given, above referred to, to produce any copy, and therefore had no knowledge of any such letter having been received by the defendant.

(By Mr. RALSTON:)

10 Q. What were the circumstances which led to the writing of that letter?

A. Kilbourn & Latta were in litigation with J. M. Latta, & I had received several letters from both parties in reference to it, in which each one of them blamed the other, and Mr. Latta had claimed in

his letter or letters that he had not authority from us to act as his agent and had not been able to obtain the papers connected with the title to our property for that reason, and requested that Mr. Sunderland and myself should send him full written authority to take all the papers connected with the business and to act as our agent in reference to it. It was because I was unwilling to comply with the request of Mr. Latta and to explain fully my
649 reasons for it I wrote this letter to Mr. Latta.

Mr. WILSON: So far as this answer relates to communications from Kilbourn or Latta or any member of the firm it is objected to, because the letters themselves are the best evidences of their contents.

(By Mr. RALSTON:)

11 Q. Did Mr. Latta reply to that letter?
A. He did.
12 Q. Have you his reply?
A. I have.
13 Q. Please produce it.

Witness produced the letter and stated that it was in the handwriting of Mr. J. M. Latta; that he received it at Virginia City a short time after writing the letter which has just been introduced and made a part of this testimony. This letter of reply of Mr. Latta is also attached herewith, made a part of this testimony, and marked "Exhibit N."

14 Q. Did you ever receive from Mr. Latta any other communications, except this letter now offered in evidence, touching the subject-matter of the agreement made between the firm and yourself in reference to the services rendered by the firm for Sunderland and Hillyer in respect to this property or touching the compensation therefor?
650 A. I never, by writing or otherwise, heard one word from Mr. Latta or any one else in relation to the subject of compensation to the firm until the account was presented to Mr. Sunderland and myself about the 1st of July, 1878.

15 Q. What service did Mr. Latta render for Sunderland and Hillyer during the year 1877 and the first half of the year 1878 in the care and management of this property? State all you know in respect to the same.

A. In January, 1877, I received the letter which has been offered in evidence from Mr. Latta, stating the dissolution of the firm and that he would attend to our business in the future. The only business done by him for the firm is as shown by his account, so far as I know, which has already been introduced in testimony. I think Mr. Latta spent considerably less than one-half of that year in Washington. I saw him here in June of 1877, I think it was, and he was then about to go to Indiana, and I judge from his letter that he remained there most of the year. I think Mr. Latta tried to do very little in relation to the property, and I think he did nothing except to disburse the money shown in his account, excepting this.

Before I went away in June I had a conversation with J. W.
651 Thompson, in which he told me that we could borrow from him money which we needed at 9 per cent., he himself saying that it was too much for people to pay on real estate which was rendering nothing, but it was worth that to him. I told him that I thought we would not want the money. Subsequently Mr. Latta, saying that he was not able to obtain it elsewhere, took $35,000.00 from J. W. Thompson at 9 per cent. interest, secured upon property which cost us three or four times that amount. Before I left here in June the note due to Mr. Willard for some $20,000 had become or was about to become due. I went myself to Mr. Willard and made an arrangement with him that upon payment to him of $5,000 he should let the note run on for a year at least, and I judged from what he said that he was willing it should run indefinitely so long as the interest was paid. I gave the $5,000.00 to Mr. Latta, with instructions to pay it to Mr. Willard. He did not pay it, and, after being at Virginia City for some time, I received a telegram from Mr. Willard, stating that he had not received his money and he would proceed to sell the property unless paid; whereupon I telegraphed to Latta in Indiana, and Mr. Latta replied that
652 he had given the money to Kilbourn & Olmstead, and blamed them for not having paid it to Willard. I think the letters which have been placed on file tell what he said about it, but the result was that the $5,000 never was paid, and the property finally sold by an arrangement, as I understand, between Kilbourn & Olmstead, in which they undertook to protect our interests, and I think did do it by the intervention of General Jeffries in the matter. The only other instance of Mr. Latta's doing anything was in reference to the grading of lots in square 158. He suggested that it would be a good thing to grade those lots, or I did—I don't know which. We rode up there and looked at them. I think this was in the summer of 1877, in the month of June. We concluded that it would be a good idea to grade down to a level with building line, or about four and a half feet on "N" street, where the bank was quite high, and that the cost would be about $1,600.00. Latta said he could not tell the cost exactly, but that he would look after it. I authorized it to be done, and told him I would furnish the money for it. The next I heard about it was from Mr. Latta, stating in a letter that it would cost about
653 $2,400.00; that he had agreed with Evans & Co. to do the grading, or had gotten Kilbourn & Olmstead to make an agreement with them, and the next I heard of it was that the grading had been done, costing $4,000.00, and requested me to send the money on for it, which I did. On coming here and examining the lot in 1878, I found that fully one-half of the grading which had been done was more of an injury than an advantage to the ground, and that evidently there had been either no attention or a dishonest attention paid to the matter of grading it. It is my understanding that Mr. Latta paid no particular attention to the subject himself, but left it to Kilbourn & Olmstead, although this I do not know

positively. Excepting this, I know nothing else done by Latta in relation to that property, nor do I think he did anything else.

16 Q. You have stated that property was left by you and Mr. Sunderland in charge of Mr. Bull, in the summer of 1878. What was the arrangement between you as to the care and management of that property?

Obj.—This question was objected to by Mr. Wilson, who objected to the witness testifying in relation to transactions with Mr. Bull.

654 A. Mr. Bull undertook to do for us, in respect to the property, substantially what had been previously undertaken by Kilbourn and Latta; that was to receive the money and notify us when it was needed for disbursements in payment of taxes and interest on other obligations. He was also required, when the necessity existed, to get loans for making such payments as we failed to furnish money for, and had authority also to sell the property whenever a price should be obtained satisfactory to us; upon these sales and any loans made he was to charge regular commissions. He attended to this for a year or two under this arrangement and these terms.

Obj.—Mr. Wilson objected to the answer just given because it was irrelevant to the case, and because the defendant is not in any way bound by any arrangement that may have been made with Mr. Bull.

C. J. HILLYER.

Subscribed and sworn to before me this 31st day of December, A. D. 1881.

WM. T. S. CURTIS,
Notary Public, D. C.

Direct examination of THOMAS SUNDERLAND (continued):

By Mr. C. J. HILLYER:

655 100 Q. Please look at these letters and state in whose handwriting each of them is and what you know about their reception.

A. The first letter, dated September 17th, 1874, is in the handwriting of Mr. Bull. The signature Kilbourn and Latta is in the handwriting of Mr. Kilbourn. The signature of Kilbourn and Latta to the letter of May 18th, 1875, is in the handwriting of Mr. Kilbourn. The signature of the letter of September 16th, 1875, is also in the handwriting of Mr. Kilbourn. The signature to the letter of December 3d, 1875, is in the handwriting of Mr. Kilbourn. The signature to the letter of June 2d, 1876, is in the handwriting of Mr. Olmstead. The signature to letter of June 19th, 1876, is in the handwriting of Mr. Olmstead. The signature to the letter of Dec. 12th, 1876, is in the handwriting of Mr. Latta. The signature to letter of November 19th, 1877, is in the handwriting of Mr. Latta. The signature to letter dated November 20th, 1877, is in the handwriting of Mr. Latta. The signature to letter dated March 29th, 1877, is in the handwriting of Mr. Latta. The signature to letter

dated February 21st, 1878, is in the handwriting of Mr. Latta. The signature to letter dated May 2d, 1878, is in the handwriting of Mr. Latta. The signature to letter dated May 25th, 1878, is in the handwriting of Mr. Latta. The signature to letter dated November 27th, 1878, is in the handwriting of Mr. Latta. The signature to letter dated November 11th, 1877, is in the handwriting of Mr. Latta. The signature to letter dated January 11th, 1877, is in the handwriting of Mr. Latta. The signature to letter dated November 23d, 1877, is in the handwriting of Mr. Latta.

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101 Q. (Showing Exhibit "L" to witness.) State what that is and in whose handwriting.

A. This is an account between Mr. Latta and myself. It is in the handwriting of John Bull.

102 Q. When was that delivered to you?

A. In September, 1878.

103 Q. Under what circumstances?

A. I had been urging Mr. Latta some two months for a settlement of our account. He made out two or three accounts, but did not deliver them to me for the reason, as he said, that he was not satisfied with the accounts. He then told me he would get Mr. Bull to make the accounts out, furnishing him with the data necessary to make the accounts. Mr. Bull gave me this account as the result of the figuring on the data given him by Mr. Latta for the purpose of making out the account.

The account referred to above and now offered in evidence is objected to by counsel for the defendant because immaterial to the issues in the present case.

657

Mr. HILLYER: I now offer in evidence the letters above referred to, which will be marked "Exhibit T. S., No. 1 to 17, inclusive.

104 Q. In the accounts rendered by Mr. Latta he charges Sunderland and Hillyer in one account and Sunderland in another with between seven and eight thousand dollars for care and management of the property during the year 1877 and half the year 1878. What do you know in respect to the service of Mr. Latta in the care and management of this property during that period?

A. I know nothing. I know of no services rendered by him during that period in connection with the property named except the payment of some taxes and some payments made upon principle and interest of deferred payments, which were a lien upon the property, which payments were made with money furnished in one case by Mr. Hillyer and myself and in the other with money furnished by myself individually.

105 Q. When did you first learn that a charge of this kind had been made or was intended to be made?

A. In the latter part of June or the first of July.

106 Q. What year?

658

A. 1878.

107 Q. Previous to that time had you any knowledge or any intimation of the intention of Mr. Latta to make a charge for

the services which he was rendering to you or to Sunderland and Hillyer?

A. I had no knowledge or intimation prior to that date that such charge had been made or would be made.

108 Q. When you learned that it had been made what did you do about it?

A. Mr. Hillyer and myself went immediately to Mr. Latta's house on K St. and protested very strenuously against the charge and its justice.

109 Q. Well, what was said to Mr. Latta in reference to its allowance as to what you and Mr. Hillyer proposed to do about it?

A. Mr. Hillyer, on our part, did the most of the talking. We told Mr. Latta we would not allow the charge, and if the money was not refunded we would bring suit to recover it back, Mr. Hillyer contending that the charge was unjust and Mr. Latta, on his part, asserting that he thought it was a just charge.

110 Q. Did Mr. Latta, in that conversation, assert or pretend that he had ever given to eitheryourself or Mr. Hillyer any notice of his intention to make such a charge prior to June, 1878?

659 A. He did not.

111 Q. What was done by yourself and Mr. Hillyer, if anything, in reference to this charge after the conversation which you have spoken of?

A. Mr. Hillyer and I employed Judge Cox to bring two suits—one in the name of Mr. Hillyer and myself, and the other in my individual name.

112 Q. For the recovery of this amount?

A. For the recovery of the amounts charged for care and management of property. This was done some time in July, 1878.

Cross-examination by Mr. J. M. WILSON:

1 Q. At the time of this interview with Mr. Latta, which you say occurred at his house on K St., do you mean K St. in this city?

A. Yes, sir.

2 Q. At that time he was living in Washington, was he?

A. His family was in Indiana. He was here alone.

3 Q. But this was his residence at that time, was it?

A. I do not know.

4 Q. Can you give the date of that interview?

A. It was in the early part of July.

5 Q. Of 1878?

660 A. Of 1878. It was immediately after we got this account from the firm of Kilbourn and Olmstead.

6 Q. This last account which you have mentioned in your testimony I understand you to say is in the handwriting of Mr. Bull?

A. Yes, sir.

7 Q. And was handed to you by Mr. Bull?

A. Yes.

8 Q. How do you know from what data Mr. Bull made up that account?

A. Mr. Latta told me he would give Mr. Bull all the data neces-

sary to make up the account. He afterwards told me he had given Mr. Bull data to make up the account.

9 Q. But you do not know from what data Mr. Bull actually made it up?

A. Personally, I do not.

10 Q. At that time Mr. Bull was your agent; was he not employed by you?

A. At the time that account was delivered to me I think Mr. Bull had been employed as our agent to take care of the property.

11 Q. Well, he was in your service at the time he handed you this paper in relation to the property?

A. He was in our service so far as future transactions and future care of the property was concerned, but not our agent as to
661 anything that had passed prior to the time of his making up this account.

12 Q. What did you employ Mr. Bull to do?

A. To make payments of taxes, liens on the property, and to make sales whenever any property could be sold at a fair price.

13 Q. Were you to pay him for his services in looking after the payment of taxes and payment of liens on the property and matters of that kind in connection with the property?

A. No, sir; we were to pay him commissions on sales, actual expenses that he might incur, and commissions on loans, if he made any.

14 Q. You had a specific agreement with him in relation to the management of the business in connection with this property?

A. I could not swear that we had any specific agreement with him, but I know that was the understanding. I could not swear now when or where any such specific agreement was made.

15 Q. Did you not make any agreement with him for his services?

A. I do not recollect anything, except that he was to receive commissions on all sales. It was then contemplated, if we could, to make loans, and if he made any loans on my account he was to have commissions on them.

662 16 Q. Your agreement with him, then, was for his services in making sales and in making loans? That wast he extent of the agreement, was it?

A. Yes.

17 Q. You had no agreement with him in reference to care and management?

A. I cannot swear whether we had or not or whether I did. I do not remember.

18 Q. Well, this account that we are speaking of, which is the last one referred to in your examination-in-chief, is one that relates exclusively to your individual property and not to the property that was purchased on account of Sunderland and Hillyer—not the joint property, as it is commonly called?

A. It relates exclusively to my individual property.

19 Q. Now, going back to the beginning of things, are you, by profession, an attorney-at-law?

A. I am.

20 Q. Of how long standing?

A. Since 1845.

21 Q. And where did you practice?

A. In the States of Missouri, California, and Nevada.

22 Q. What is the profession of Mr. Hillyer?

A. He is a lawyer.

23 Q. And how long has he been a lawyer?

A. I cannot state.

24 Q. A good many years, has he not?

663 A. Yes.

25 Q. And where has he been practicing?

A. He has practiced in the States of California and Nevada and perhaps in the adjoining Territories and in the District of Columbia.

26 Q. A man of large experience in the profession, I believe?

A. I think so.

27 Q. How long did he practice law in the District of Columbia?

A. He had an office here, according to my recollection, three or four years, but I think the most of his practice was in the Supreme Court of the U. S. at that time.

28 Q. What years did he have his office in the District of Columbia?

A. The first personal knowledge I have of his having an office here I think was in the fall of 1871.

29 Q. And how long did he continue to have an office here?

A. I think he had an office here until he went to Nevada, but I am not sure.

30 Q. When was that?

A. In 1874 or 1875; I do not remember which.

31 Q. Now please state who were the parties who were interested in making the purchase of what is denominated commonly

664 the joint property, which is the property involved in the controversy in this suit—of course I am referring to the suit of Sunderland and Hillyer.

A. William M. Stewart, C. J. Hillyer, and myself.

32 Q. What were your respective interests in the property purchased?

A. I had one-half and Mr. Stewart and Mr. Hillyer one-quarter each.

33 Q. Were these purchases made for speculation?

A. They were—that is to say, they were purchased not for occupation, but for resale whenever sufficient advance upon the purchase price could be had.

34 Q. How were the moneys to be furnished by the purchasers—in what proportion by each?

A. In proportion to our respective interests.

35 Q. How were the profits to be divided?

A. I do not think anything was ever said about profits or losses, but I suppose, as a matter of law, and certainly as I contemplated, we were to share the profits, if any, in proportion to our interests.

36 Q. And about losses?

A. I presume in the same way.

37 Q. When you and Mr. Hillyer and Mr. Stewart engaged in this business, state whether or not it was contemplated to in-
665 vest largely in real estate in the District of Columbia for the purposes indicated in your former answer.

A. It was understood between us that we should invest a considerable sum of money. I do not know whether it would be called a large investment or not. It was my intention to invest and buy on my own account beyond what the others wanted to buy in connection with me.

38 Q. Did you or did you not enter into a distinct arrangement with each other with reference to the purchase of property in this District?

A. We did not. We, on consultation, agreed to buy an indefinite amount of unimproved real estate in the northwest part of the city. When the cash payments on our purchases amounted to a little over one hundred thousand dollars Mr. Hillyer announced that he did not want to buy any more.

39 Q. That is a little further along than my question goes. I want to get at the arrangement, if any was made, between yourself and Hillyer and Stewart with reference to the entering into the purchasing of property in the city of Washington.

A. There was no special arrangement. The only agreement was that we should buy an indefinite amount of property, as I
666 stated before, and I should take one-half and they each one-quarter. That is the only arrangement that was made.

40 Q. Was that arrangement in writing?

A. No, sir.

41 Q. That was a verbal arrangement?

A. Yes, sir.

42 Q. About what time was that arrangement made?

A. I cannot remember the exact time that we finally came to the conclusion to make purchases. We had talked about it for two or three months, and I am inclined to think that agreement between ourselves was made in April, 1872.

43 Q. At that time the Board of Public Works was engaged in making extensive improvements of streets and avenues in the city of Washington, was it not?

A. It was.

44 Q. And, in consequence of those improvements, it was anticipated there would be a rise in values in the direction in which those improvements were extended?

A. That was the general impression and my impression.

45 Q. And your understanding among yourselves was that you would make these purchases, pay the cash payments that
667 might be required, and then rely upon future sales of the property to meet the deferred payments? Is that the fact about it?

A. It was my expectation that no calls would be made on us for any payments to any considerable extent after the cash payments. I was led to that conclusion and that belief more on the opinion

expressed to us by the firm of Kilbourn and Latta than anything else.

46 Q. Well, no matter what led you to that opinion, that was what was contemplated by you?

A. That was my expectation.

47 Q. And was not that the expectation of your associates?

A. I do not know.

48 Q. Was not that matter talked over amongst you?

A. I think it was. I think it was talked over between the firm of Kilbourn and Latta and Mr. Hillyer and Mr. Stewart and myself.

49 Q. When did you commence making those purchases?

A. The first purchase consummated was in the month of May, 1872.

50 Q. When was the last purchase of joint property made? Can you give about the date?

A. It was in June, 1872.

51 Q. So that all of your joint purchases were made within a period of, say, two months?

A. Yes.

668 52 Q. You have stated that you went to Europe. Will you please state what time you went?

A. In May, 1873.

53 Q. Had any sales been made between the date of the last purchase and the time you went to Europe?

A. No; not on joint account.

54 Q. How long were you in Europe?

A. About five months.

55 Q. When you returned did you come to the city of Washington?

A. I did not.

56 Q. When were you next in the city of Washington?

A. In the last of June, 1878.

57 Q. So that during all that time you were absent from the city of Washington?

A. I was.

58 Q. Now, during all this period between June, 1872, and the time you returned to Washington in 1878, where was Mr. Hillyer?

A. So far as I know or have reason to believe, he was a part of the time in Europe and a part of the time in Washington and part of the time on the Pacific coast, mostly in Nevada.

59 Q. How much of the time, so far as you know, was he in Washington?

A. That I cannot tell.

60 Q. But it was very little of the time, was it not?

669 A. I cannot even approximate it.

61 Q. When did Mr. Stewart cease to have an interest in this property?

A. In December, 1872.

62 Q. So that within a few months after the purchases were made Mr. Stewart went out of this business and had no further concern with it? That is the fact, is it not?

A. He went out in December, 8172, and never had any further interest in the property.

63 Q. Can you tell what time in the year the panic, as it is commonly called, of 1873 began?

A. I think it was in September.

64 Q. Now, from that time forward to, say, 1876, what was the condition of the real estate market in this city, as you understand it?

A. I have been informed that it was quite dull.

65 Q. Could this property have been sold during that interval without subjecting the owners to loss?

A. I am not sufficiently posted on the state of the real estate market during that period to give an opinion.

66 Q. In point of fact, was any considerable portion of it sold during that interval?

A. There was only one piece of property sold during that period.

67 Q. Do you recollect the amount of that sale?

A. Eight thousand dollars.

670 68 Q. Now, what was the extent of the purchases?

A. About three hundred and seventy thousand dollars.

69 Q. What was the extent of the cash payments on those purchases?

A. A little over one hundred thousand dollars. This is exclusive of the property which prior to May, 1872, had been purchased by Mr. Hillyer and Mr. Stewart, which amounted to about eighty thousand dollars.

70 Q. Now, this property which was purchased by Mr. Stewart and Mr. Hillyer was, after you came in, brought into the joint account, was it?

A. I purchased from Stewart at the time that I bought his interest in the property bought by us jointly—his half interest in the three squares which he and Mr. Hillyer had prior to our joint purchases bought on their own account.

71 Q. And thenceforward the property was all held by yourself and Mr. Hillyer?

A. Thenceforward it was all held by myself and Mr. Hillyer, Mr. Hillyer and myself being equally interested in the three squares bought by Stewart & Hillyer, and in the balance of the purchases I owned three-fourths and Mr. Hillyer one-fourth.

72 Q. As to the deferred payments on those purchases,

671 what form of obligation was given, and how were these deferred payments secured?

A. The largest pieces of property purchased by us were purchased subject to encumbrances already existing on the property. In those cases no obligation was given by any one at the time of the purchase. In all other cases it was agreed that Mr. Latta should sign notes as trustee for deferred payments and execute as such trustee a deed of trust to secure the same. In one or two instances he executed his individual note without being described as trustee, and in the same capacity executed deed or deeds of trust to secure the same.

73 Q. To what extent did he execute his individual notes?

A. I have made the calculation, and my recollection is that it was a little over one hundred and twenty-seven thousand dollars ($127,000.00). That sum includes all notes executed by him in his individual capacity and as trustee. In one case he executed his individual note for forty thousand dollars ($40,000.00), and I think he may have executed his individual note for four or five thousand dollars in some other little purchases.

74 Q. And all these notes were the ordinary form of note,
672 signed by Mr. Latta, with the word "trustee" annexed to his name? Is not that the fact?

A. I think so. I did not at the time see any of the notes, but I think I have seen some of them since, cancelled. That is my recollection of it.

75 Q. So that if in law a note such as that was the individual note of Mr. Latta, then he gave his individual notes to the extent you first mentioned—one hundred and twenty-seven thousand dollars ($127,000.00)?

A. If in law there is no distinction between signing a note in his individual capacity and as trustee, then I suppose he would have been personally liable to the extent of one hundred and twenty-seven — dollars ($127,000.00).

76 Q. Now, you being absent from the city of Washington and Mr. Hillyer being absent, upon whom did it devolve to look after these deferred payments, the payment of interest, and the renewals or extensions, if renewals had to be made or procured?

A. I do not know of any legal obligation upon any one to look after it.

77 Q. Mr. Latta was not bound to do it, was he?

A. I think not.

78 Q. Nor Kilbourn and Latta?

A. No.

79 Q. And practically you had no one here to attend to
673 those matters during that long interval that you were absent from the city of Washington?

A. The firm of Kilbourn and Latta agreed with us, or at least it was so understood, that they would look after the taxes and the maturity of these obligations and inform us when they matured.

80 Q. But they were under no legal obligation to do it?

A. I think not.

81 Q. You had made no agreement with them that they should do it, if I understand you?

A. I cannot remember any absolute agreement with them to attend to this business, but it was always my understanding—and how I got the impression or the understanding I cannot exactly say now—that as long as the property was left in their hands for resale that they would without charge look after the payment of taxes and payments upon maturing obligations which we owed.

82 Q. But you had no agreement with them to that effect?

A. I cannot remember having made any such contract.

83 Q. And know of no such contract having been made?

A. I cannot swear to any of my own personal knowledge.

84 Q. In point of fact, they did during these years look
674 after the matter of the payment of taxes and the payment of liens or extensions, where liens were necessary to be extended, and all matters appertaining to the management of this property, did they?

A. They attended to the disbursement of the money furnished by us in the way of payment of taxes, interest, and principal on deferred payments. We had during that period no other agents.

85 Q. They attended to that for you during all this time?

A. Yes, sir.

86 Q. The purchases were quite numerous, were they not?

A. They were not very numerous. The purchases generally consisted of entire squares of ground, and very large squares.

87 Q. Somebody had to keep the run of this business during these years, and these gentlemen did it. That is the fact, is it not?

A. Yes.

88 Q. Loans had to be made in order to meet maturing obligations, did they?

A. There was only one loan made by the firm.

89 Q. How large a loan was that?

A. Fifty thousand dollars.

90 Q. Were any loans made by any individual member of the firm?

675 A. No, sir; not that I have any knowledge of.

91 Q. The assessments upon this property for street improvements were very large, were they not?

A. They were.

92 Q. And the matter of those assessments had to be looked after by somebody, didn't they?

A. They were not looked after by anybody until the latter part of the year 1878 or 1879.

93 Q. The ascertainment of the proper amount of taxes had to be looked after, didn't it, that should be paid upon this property?

A. I think not.

94 Q. Well, in short, whatever had to be done in connection with this business was, in fact, done by these gentlemen, was it not?

A. I cannot tell. I only know of their paying taxes and applying money furnished them to the extinguishment of liens upon the property.

95 Q. Do they not in these very letters that you have produced this morning call your attention to maturing obligations and advise you as to the amount of money that is necessary that they shall have in order to meet these obligations and save this property from being brought to sale?

A. In the letters written to me and, perhaps, some to Mr. Hillyer, the firm advise us of maturing obligations and taxes.

676 96 Q. So they were looking after these matters for you and keeping you advised?

A. Oh, yes; they kept us advised as to maturing obligations.

97 Q. And for doing this you never had any definite arrangement with them whatever or contract for services?

A. I cannot swear to that.

98 Q. You cannot swear that you did have any such arrangement?

A. No, sir; I do not remember distinctly of any arrangement that was made.

99 Q. Did you ever pay them anything for these services excepting as they give you credit in your accounts?

A. We never paid them anything for such services unless their taking our money in their hands and applying it to extinguishing what they called charges for care and management be payment, which amounts we have always disputed.

100 Q. Well, all I want to get at is that there is no payment outside of that?

A. No.

101 Q. Did you ever have any agreement of any kind with Kilbourn and Latta in writing?

A. Never had any agreement of any kind with them in writing.

677 Cross-examination (continued):

By Mr. WILSON:

102 Q. I understand from your examination-in-chief that you claim there was an employment by you and your associates of Kilbourn & Latta as your agents or brokers for the purpose of making these purchases; am I correct in that?

A. You are.

103 Q. Now, please state whether any definite agreement was made with Kilbourn and Latta. And, if so, when it was made and by whom?

A. I understood the agreement to be a definite one—that is to say, they were to negotiate on our account for all such property as we should point out or designate, and report to us the lowest price at which the property could be purchased, and then, when they had so reported, we were to determine whether we would take the property or not. Exactly when that arrangement was made I cannot now remember. We had a number of conversations with them in reference to the project of buying a considerable amount of unimproved property in the northwestern part of the city, and advised with them very often as to the propriety of making such purchases and as to the prospective profits to be made upon such purchases, when they told us their terms, which was to purchase on
678 commission, and that they were ready to enter upon negotiations as soon as we directed them to do so. When we gave the first order I do not now remember.

104 Q. Was there any agreement made more definite than what you have already stated, or any other agreement than what you have just stated?

A. I think it was a little more definite than that; that they held themselves ready to make, on our account, all purchases that we might desire them to make, if in their negotiations with the owners of the property designated they could purchase at a price which

they could advise us to accept. I know of nothing more definite than I have thus stated.

105 Q. And that is all the agreement that there was between you, if I understand you?

A. I do not remember anything else.

106 Q. Did you place yourselves, by any agreement that you made with them, under any obligations to go to them exclusively in the transaction of your business?

A. I do not know that we legally bound ourselves to go to them alone, but the understanding was——

107 Q. I do not want the understanding; I want the agreement. I am now confining myself to the agreement between you.

679 A. I do not remember any agreement that would have absolutely bound us to go to them alone.

108 Q. You were at liberty to go to anybody else in regard to any purchase you desired to make?

A. Legally, I suppose we were.

109 Q. In fact you did, did you not?

A. In one instance.

110 Q. What instance was that?

A. In the purchase of certain lots in square 195.

111 Q. Of whom did you make those purchases?

A. In my direct examination I am made to say that it was Colonel Barret; I think it was Colonel Barret's brother.

112 Q. Who made this agreement that you have been speaking of on the part of yourself and associates?

A. That I cannot remember. I am quite certain that Mr. Hillyer and I personally went and told them to go on and make the negotiations. I do not know whether Mr. Stewart was present or not.

113 Q. That was when you gave them directions to make some purchases?

A. That I understood to be the close of the arrangement between us. We had talked the matter over a great many times. We were to buy an indefinite amount of property and they were to purchase for us as our brokers.

680 114 Q. Well, now what I want to get at is when that agreement was made and who made it, so far as your side of the case is concerned?

A. I might say that we all made it.

115 Q. Were you all together?

A. I am not certain whether Mr. Stewart was present or not.

116 Q. Where was that meeting?

A. At the office of Kilbourn and Latta.

117 Q. Now, is what you have been stating as an agreement simply your conclusions as to a great number of conversations which you had had with Kilbourn and Latta touching the prospective purchase of real estate in this city?

A. I think not. When we finally came to the conclusion to commence purchasing and gave them some idea of the amount of property we wanted to purchase, and after, at the solicitation of the firm, we agreed that the title should be taken in the name of Latta as

trustee, Mr Latta said that property belonging to other parties stood in his name as trustee, and to keep our property distinct from the property of others which he held in that way he would divest himself of title to all other property except that which we contemplated purchasing, and such I think would not have been the case
681 if it had not been agreed between us that they should do our purchasing.

118 Q. So you argue that there must have been an agreement from that fact that you have just stated?

A. That is one of the facts that led me to the conclusion.

119 Q. That there must have been an account?

A. Yes, sir.

120 Q. So that you are not able to state in terms any definite agreement which was ever made between yourself and associates on one part & Kilbourn & Latta on the other?

A. There was an agreement, but I cannot state the time when; but we arrived, after many conversations, at the conclusion that we, on one side, were to purchase and they, on the other side, were to act as our purchasers and as our brokers.

121 Q. Who conducted that conversation which led to this conclusion?

A. On our side we all talked; on their side, Kilbourn & Latta.

122 Q. Can you state anything that was said by anybody in connection with this matter at the times you indicated?

A. I cannot repeat the language of one.

682 123 Q. And nothing more definite or distinct was ever concluded upon than what you have already stated?

A. I think that was as definite as I can now remember it.

124 Q. And the whole scope of the agreement you have stated?

A. I have.

125 Q. Then state if there is anything else in connection with it that you can remember; state what it was.

A. Do you mean prior to the agreement?

126 Q. I am speaking of the agreement.

A. I cannot state anything more definite.

127 Q. You have stated all that occurs to you?

A. All that occurs to me now.

128 Q. Then state how these gentlemen were to be paid for their services.

A. They were to be paid commissions on all purchases made by them for us.

129 Q. That was a part, then, of the agreement?

A. Yes; part of the agreement. That was their proposition to us. My recollection is that at a subsequent time—at the time Mr. Latta said he should have to divest himself of the title to other property—we accepted their terms.

130 Q. Then in your first statement you did not state all the agreement between you, as I understand you now?

683 A. I intended to state it all. If I have not, it was an oversight.

131 Q. I understand your statement now to be that the agree-

ment was that they were to negotiate for the purchase of such property as you concluded you desired to buy, to report to you the price at which it should be purchased, and that if purchased you should pay them commissions. What commissions were you to pay them?

A. I did not state that we were to pay them commissions. We were informed by the firm of Kilbourn & Latta that very often in dealing with the owner of property which we desired to purchase, when they obtained the sum which the owner said was the lowest price at which he would sell, the property being negotiated for, they could frequently get the owner to pay them commission; in which case their proposition to us was to charge us no commission.

132 Q. Then, if I understand you, the agreement, as you now state it, was that they were to negotiate for the purchase of property which you indicated a desire to purchase, were to report to you the price at which it could be purchased, and you were to pay them commission if they could not get commission from the sellers
684 or vendors, and if they could get commissions from the vendors then they were to charge you nothing?

A. That was the agreement.

133 Q. So that by this agreement, as you now state it, they were at liberty to get commissions from the vendors, if they could?

A. That was so understood.

134 Q. Was there any agreement that they should not purchase real estate themselves, if they saw fit to do so?

A. There was nothing said about that.

135 Q. There was nothing in the arrangement between you and them which precluded them from making any purchases of property on their own account that they might see fit to make?

A. None whatever, unless it was the property which we authorized them to purchase for us.

136 Q. Was there anything in the agreement which restricted them from purchasing property on their own account which you had indicated a desire to purchase?

A. In words there was not, because we never contemplated, when we employed them to buy a piece of property for us, that they would buy it on their own account.

137 Q. Suppose they had been negotiating for a piece of
685 property on their own account, and you indicated to them that you wanted to buy that same piece of property, was there anything in the agreement which would preclude them from completing the purchase on their own account?

A. Most assuredly if they were acting as our brokers there was nothing said in this respect, because it was not contemplated.

138 Q. So that, in terms, they were not precluded from making purchases of property on their own account?

A. In terms there was nothing to preclude them from buying on their own account any property which we had designated that we desired to buy.

139 Q. Did they buy any property for you except such as you designated that you desired to buy?

A. I think they recommended the purchase of lots in square 158, which we afterwards examined and thought it desirable property, and they purchased several lots in that square for us.

140 Q. Did they ever make any purchases for you of property before you had yourselves made an examination of the property and determined to make the purchase?

A. I do not know of their having made any purchase for
686 us prior to our examination of the property. When we made an examination and thought the property desirable we instructed them to buy it or negotiate for it and get the lowest price for which it could be purchased and report to us.

141 Q. Did they in any case make a purchase for you without your previously being advised as to the price at which the purchase could be made and without your having learned what the price was, examining the property, and instructing them to make the purchase at the price named?

A. I think they made several purchases where, after reporting to us the price, we did not examine the property after the report was made. In the purchases in square 158 I do not think we examined any particular lot that was ever designated by them, but we examined, after their suggestion that it was a good square to purchase in, generally, the square, its location and situation; but, as to particular lots, I do not know that we ever examined them.

142 Q. Well, these were lots in open, unimproved squares?

A. In square 158 there were some improvements.

143 Q. But I am speaking of the property that you were
687 dealing with. It was open, unimproved property?

A. With few exceptions, it was unimproved property. There were some shanties on two of the squares.

144 Q. You examined the squares, the locality of the property, knew its situation before purchase was made—that is the fact?

A. Yes, sir.

145 Q. Then you knew the price at which the property was to be purchased. That is so, is it?

A. They reported to us the price and represented it to be the lowest price.

146 Q. They reported to you the price, and, after having made an examination of the property and after being advised or informed as to the lowest price, as reported by them, you authorized them to make the purchase. Is that correct?

A. That is correct.

147 Q. So that in all cases of purchases made on your account before the purchases were made you were fully advised as to the character of the property and the price to be paid for it?

A. Yes.

148 Q. And you assented to these prices & purchases?

A. We assented to the purchases at the prices reported.

149 Q. And the purchases were accordingly made?

688 A. Yes, sir.

150 Q. You were in the city during the time these purchases were being made?

A. Yes, sir.

151 Q. Was Mr. Hillyer here, also?

A. Yes, sir.

152 Q. And did you meet at the office of Kilbourn and Latta relative to these purchases and discuss these matters during that time?

A. We were there, I think, almost daily.

Cross-examination of THOMAS SUNDERLAND (continued):

By Mr. WILSON:

153 Q. At the time that you commenced making these purchases or conceived the idea of making purchases in the northwest part of the city, state whether or not there was a large amount of unimproved real estate in that locality.

A. There was; and that was one of the reasons that induced us to buy in that section of the city.

154 Q. The unimproved real estate in that part of the city was very much greater in extent than your purchases amounted to, was it not?

A. Oh, yes.

689 155 Q. Did your agreement that you have spoken of, with Kilbourn & Latta, preclude them from making sales to other persons than yourselves?

A. I should think not.

156 Q. Did your agreement require them to act exclusively for you in the matter of making sales or negotiating sales of real estate in that part of the city?

A. It did not.

157 Q. They were brokers doing a large amount of business in this city at that time, were they not?

A. They were.

158 Q. They were probably doing the most extensive business of any brokerage firm in this city at that time, were they not?

A. I cannot answer that question because I knew no other real estate brokers at that time in the city.

159 Q. Was there anything in your agreement which required them, if they knew of sales to be made in that part of the city, to notify you that the property was for sale before offering it to anybody else?

A. I do not think there was any legal obligation upon them to do so.

160 Q. Your agreement did not cover anything of that sort, did it?

A. No, sir.

690 161 Q. They were at liberty to negotiate with anybody they saw fit to negotiate with in relation to the sale of any property that might come to them for sale?

A. Except such pieces of property as we had prior to that time pointed out.

162 Q. Prior to what time?

A. Prior to the time that they might negotiate a sale to anybody or might be in negotiation for a sale to any one else.

163 Q. I do not know that I exactly understand your answer;

do you mean by your answer that when you made your agreement that agreement required them to negotiate with nobody but you as to such property as you might have pointed out to them and indicated your desire to purchase? I want to know whether that was embraced in the agreement or not?

A. I do not think in terms it was embraced in the agreement.

164 Q. Whatever you may have said on that subject, therefore, is merely an inference that you drew from the agreement, is it?

A. I understood that from our relations, after their employment by us as brokers, that when we authorized them or directed
691 them to negotiate for a particular piece of property, pointed out by us, that they were not at liberty to negotiate with anybody else until we had arrived at a conclusion to take or reject that particular piece of property at the price reported to us by them. It was the result of the relations and obligations between principal & agent rather than of anything which had been embraced in terms in the agreement.

165 Q. It is your conclusion, then, of the law as to the relations between principal & agent rather than any specific agreement that was made between you and them?

A. Yes; I think that is correct.

166 Q. Now, that makes it necessary to know specifically what your agreement was, and I desire, therefore, to ask you whether that agreement was anything more than this, in substance: That you had repeated conversations with them in regard to the purchase of real estate in that quarter of the city, and that you expressed to them your desire that they should act for you as your brokers in regard to any purchase that you might wish to make. Is that not the sum total of the whole thing?

A. I think that is about the substance of it. My best recol-
692 lection of it now is that the most of the conversation we had were as to the advisability of purchasing property, we asking and receiving their advice as to the probability of making a speculation by the purchase of property in that neighborhood. After repeated conversations they told us their terms, and then my recollection is that we consulted together ourselves and concluded to make the purchases. I do not think much attention was paid to the terms, because we supposed—at least, so far as I was concerned, I supposed—they were the terms of any broker in regular business here, and that they would charge as regular brokerage. We went to them & told them that we accepted their terms. It was chiefly as to commissions.

167 Q. In other words, you & your associates had repeated conversations with them touching the advisability of your entering into this speculation, you advising with them or conferring with them touching the probabilities of an increase in value of real estate in that part of the city, and the result of those conversations was that you came to the conclusion that you would embark in this business, and nothing particular was said in regard to the terms upon
693 which you would engage in that business, so far as your relations with them were concerned. Am I correct in that?

A. They stated before we concluded the purchases—and I think Mr. Kilbourn was the man who told us—that they would charge, as I have before stated, commissions in all cases where they could not get commissions from the seller.

168 Q. Then it is true, is it not, that in determining or with a view of determining whether you would embark in this business or not you had repeated conversations with them touching the advisability of going into a speculation of that kind and touching the prospect of making profit out of it?

A. That was the subject of conversations.

169 Q. And you say in that connection they told you they should charge commissions on the purchases where they could not get commissions from the vendors? Is that right?

A. That is so.

170 Q. And that is the whole of it, is it not?

A. I do not know that in those conversations there was anything said in reference to any charge for taking care of the property.

694 I think that was about the sum and substance of what we were told by them, & my recollection is that when we concluded to buy we paid very little attention or attributed very little importance to the matter of commissions, but simply told them we had concluded to make the purchases.

171 Q. Then the sum and substance of the whole matter was about as I have stated?

A. I think so.

172 Q. After these repeated conversation- and after they had stated to you what their charges would be, you came to the conclusion that you would make the purchases and the purchases referred to were made? All those purchases, I believe, were made within a period of about twenty or twenty-one days, commencing in May and terminating in June, and extending over a period of about twenty-one days?

A. That is what the account shows, but they were negotiating for some pieces of property some time before any purchases were consummated. At any rate, they were directed to negotiate some time before the first purchase was made.

173 Q. Well, the purchases were actually made within about the period I have stated, I believe?

695 A. I can only answer that by reference to the accounts, because I have no other means of recollection. The exhibit will show the dates at which the purchases were consummated, I suppose.

174 Q. Then, if I understand you correctly now, you were in error when it was averred in this bill that these brokers should ascertain and point out unto your orators and the said Stewart such lots and parcels of land in the said section of the said city as in the judgment of the said firm might be most advantageously acquired by your orators and the said Stewart.

A. No, they pointed out some pieces of property to us, and after they pointed them out we went and examined them,

175 Q. Oh, no, you do not get the point to the question, I think.

I am talking about the agreement that was made between you. The agreement is stated one way in the bill and another way in the testimony, if I understand the testimony.

A. I do not remember that there was any distinct agreement to that effect. As a matter of fact, they did do it.

176 Q. That part of the bill, then, is erroneously stated?

696 A. No; I think not.

177 Q. Well, do you say now there was any such agreement?

A. I say I do not know that there was any distinct agreement of that kind.

178 Q. What part was it that was purchased through some other broker than this firm?

A. Part of square 195.

179 Q. Why didn't you go to them for that purchase?

A. We were informed that the relation between the owner, whom I did not know at that time, and either Col. Barrett or his brother—I think his brother—were such that he could negotiate better with the owner than any one else.

180 Q. But you did not bring that to the attention of Kilbourn & Latta?

A. I think we told them while this negotiation was going on; certainly when it was closed they were informed of it; they attended to the searching of the title, the making of the cash payment, and the securing of the deferred payment. In all other respects than the negotiating for the purchase, they acted in reference to this piece of property in the same manner as they did in reference to this piece and all purchases by them.

697 181 Q. They looked after the abstract of title, et cetera?

A. Yes.

182 Q. But had nothing to do with the negotiations?

A. No.

183 Q. You didn't think you violated any agreement with them in pursuing that course?

A. My recollection is that we informed them at the time.

184 Q. And they made no objection?

A. No.

185 Q. They made no objection to your purchasing through any other brokers you saw fit?

A. The only remark that I remember their making was that I think Kilbourn said that they could have bought the property on better terms.

186 Q. What did you pay Col. Barret?

A. My recollection is, although I do not know that it is shown in any account, that he was paid one thousand dollars ($1,000).

187 Q. Did you pay the money directly to Barrett?

A. I do not know how it was paid. Without referring to the account, I would say that it was paid by Kilbourn & Latta, but I am not certain.

188 Q. How were Kilbourn & Latta paid for their services in that matter?

698 A. They did not charge anything in that matter for their services. They charged simply for the expenses of searching the title and recording the deed, I think.

189 Q. Who was the owner of square 115?

A. The Institution for the Education of Colored Youth.

190 Q. Can you state from memory what time that purchase was made?

A. The deed is dated on the 25th of May, 1872.

191 Q. It was made very shortly after you commenced these investments?

A. No; I think it was two or three weeks after we had instructed Kilbourn & Latta to purchase for us, and that was one of the squares that we pointed out ourselves, being directed to it by the growth of trees all around it.

192 Q. Your attention having been directed to it, you were informed by them, I believe, as you allege, what the square could be purchased for?

A. Yes, sir.

193 Q. And you assented to the terms?

A. We did.

194 Q. Do you know how much it was per square foot?

A. I do not.

195 Q. Do you know anything about any negotiations that they had put on foot themselves prior to that time to purchase that property?

699 A. At the time I did not know the owners, nor did I know that any negotiations had been set on foot by Kilbourn & Latta for the purchase of the property. They gave us no such information.

196 Q. Nor by the terms of their contract were they bound to give you any such information?

A. By the terms of our contract and by their advice we refrained from asking who the owners of any property were, and not only on their advice, but from the character of our relations with them we never attempted to negotiate for any piece of property ourselves.

197 Q. It is not usual in transactions of this kind to disclose either the name of the buyer or seller, is it?

A. I think not. So far as I have any knowledge of dealing in real estate, the broker generally keeps those things to himself.

198 Q. Were you satisfied to take this property, square 115, at the price they stated?

A. We were; partly on our own judgment and partly on the advice of Kilbourn & Latta.

199 Q. Was there anything said in this agreement between you & them to the effect that they were to point out ground and
700 give you their judgment as to its value and the probability of making profit out of it? I am speaking now of the agreement between you.

A. I don't know that that was in the agreement, but that is what they proposed to do—in all cases to advise with us as to the advisa-

bility of making any purchase, and it is what they did do in reference to every purchase made.

200 Q. How frequently were you in their office during the time these purchases were being made?

A. I was in the office almost daily for, say, a month before the first purchase, during the time the purchases were being made, & from that time until the early part of July.

201 Q. Did they ever refuse to show you any papers in connection with any of these transactions?

A. So far as I am concerned personally, I never asked to see a paper. I had so much confidence in them that I did not ask to see a paper, an abstract, or a deed.

202 Q. You have stated in substance in this bill that they concealed certain facts from you, kept deeds from the record, et cetera. Do you not know that is a matter of policy, and understood by you and them, that it was advisable not to promptly record deeds,
701 so that the market might not become excited by reason of these large transactions?

A. I have no recollection of any such suggestion by them—in fact, I did not know but what the deeds had been recorded immediately upon their execution until last February, when I commenced to search the records in reference to these pieces of property.

203 Q. I believe you have already stated, and if you have not I want to have you state it, that there was nothing in your agreement which precluded them from making purchases on their own account?

A. There was nothing said about it at all.

205 Q. Were you aware of the fact that they were making purchases, operating largely on their own account?

A. I was not.

206 Q. Were you aware of the fact that they were making purchases for others very largely and took the title in the name of some one of the firm as trustee?

A. I only knew from what they told me at the time that we concluded to make the purchases and so informed me, that Kilbourn held some property in trust for others as well as Mr. Latta; how much I did not then know and do not know now, but they
702 told me—I think Mr. Latta told me—or told us that they had been buying for the Real Estate Pool. I do not think he mentioned any other association or individual for whom they had been buying in that way.

207 Q. Have Sunderland & Hillyer brought a suit against Kilbourn & Olmstead in the District of Columbia for these same matters that are set up in the bill, that is pending in the circuit court of the United States at Indianapolis, in which this deposition is being taken?

A. They have for all the items involved in this suit except such charges as were made by Mr. Latta after the dissolution of the firm.

208 Q. That suit is now pending?

A. That suit is now pending.

209 Q. And the taking of testimony in that case is proceeding, I believe—has been commenced and not concluded?

A. It has been commenced and not concluded.

210 Q. Were any reports made to you by Kilbourn & Latta as to the purchases made, moneys expended, and expenses incident to the purchase of this property; and, if so, what reports were made?

A. The purchases were closed in June, 1872. The report-
703 of those purchases are found in "Exhibit A." There were no purchases made, after that time for our joint account. There was a report made, which purports to be an account current, on the 4th of September, 1872. On the same date there was also a similar account rendered to me individually. That is the last report which we have received from them of any disbursements up to the last of June or the first of July, 1878.

211 Q. But in the meantime were they not constantly advising you as to the moneys required to meet deferred payments, interest, and taxes, giving you the amounts that were necessary to meet these obligations?

A. They kept us advised of maturing obligations as well as taxes, as is shown by the letters filed yesterday.

212 Q. And they continued to do that up to 1878, did they not?

A. I thought they did nothing else but call for money.

213 Q. Still they did not call for any money except such as was needed, did they?

A. Well, I think they did in 1876. At the close of the year 1876, after having appropriated of our money over twenty-two thou-
704 sand dollars ($22,000) on the pretext that the same was due them for the care & management of the property, they had still in their hands over eighteen thousand dollars ($18,000).

214 Q. And what was done with that eighteen thousand dollars ($18,000)?

A. It was subsequently accounted for by Kilbourn & Olmstead.

215 Q. Applied to the payment of indebtedness, was it not?

A. In part.

216 Q. Well, if there was any part of it otherwise applied, what was it?

A. There was twenty-seven hundred dollars ($2,700) which, in the summer of 1878, I gave a receipt for to Kilbourn & Olmstead; with that exception the eighteen thousand dollars ($18,000) was disbursed on our account.

217 Q. That twenty-seven hundred dollars ($2,700) was an element of dispute in the suit then pending between Kilbourn & Olmstead & Latta, was it not?

A. I was so informed by those parties.

218 Q. You were informed, were you, that Latta was claiming that that twenty-seven hundred dollars ($2,700) which belonged to you was by the terms of the dissolution between Kilbourn & Olm-
705 stead & Latta to be paid over to Latta, to be accounted for to you? That was the subject-matter of dispute, was it not?

A. I never understood it that way.

219 Q. Was not Latta claiming that the, being trustee of this prop-

erty when the firm dissolved, the duties of manageing it devolved upon him, and that this amount of money, which belonged to you, should be paid over to him?

A. I never read the pleadings in the case.

220 Q. Well, was not that your understanding?

A. No; that was not my understanding.

221 Q. What was your understanding?

A. My understanding was that the eighteen thousand dollars ($18,000)——

222 Q. I am talking about the twenty-seven hundred dollars ($2,700).

A. Well, the twenty-seven hundred dollars ($2,700), being a part of the eighteen thousand dollars ($18,000), was to be paid out by Kilbourn & Olmstead on our account.

223 Q. I know that may have been your understanding as between yourself & Kilbourn & Olmstead, but the controversy between Kilbourn & Olmstead & Latta was whether the money was to remain in the hands of Kilbourn & Olmstead after dissolution or was to go over to Latta as your trustee.

706 A. That I do not know.

224 Q. Well, do you remember or not that pending that controversy and while that case was being brought you gave a receipt to Kilbourn & Olmstead, to be used in that case, for twenty-seven hundred dollars?

A. I did.

225 Q. And the giving of that receipt for the twenty-seven hundred dollars settled that dispute as to that item, whatever it was, as between Kilbourn & Olmstead on the one side and Latta on the other?

A. I understood that it did.

226 Q. In the progress of this business it became necessary to make renewals of obligations that were maturing, did it?

A. What do you mean by renewals?

227 Q. I mean either renewals of notes or extensions of time for payments.

A. It became necessary to get extensions of time. I do not think that any notes were renewed.

228 Q. You do not wish to be understood as saying, I presume, that in all of this business as fast as moneys became due you furnished the money necessary to make the payments?

A. Up to some time in the summer, I would say, of 1876 all the money that they advised us was necessary was furnished them.

707 229 Q. But do you not know it to be the fact that they negotiated for renewals or extensions, so that it became unnecessary, or they relieved you from the necessity of furnishing all the money that otherwise would have been required? I mean not only prior to July, 1876, but up to 1878.

A. I was informed by the firm and after its dissolution by Mr. Latta that in some cases extensions had been made. My information is derived from letters on file in this case.

230 Q. Well, you know as a fact that you did not furnish money

enough from time to time to meet all the obligations as they matured? I am speaking of the time generally in relation to all this business.

A. Up to July, 1876, we furnished all the money the firm said was, necessary to pay all maturing debts and taxes except the special improvement tax, which at that time we did not expect to have to pay. Subsequent to July, 1876, we did not furnish all the money that the firm while it existed & Mr. Latta after the dissolution of the firm said was necessary to meet maturing obligations. I know that some of the notes in 1876 and thereafter were overdue.

231 Q. Were there no extensions prior to 1876?

708 A. I never heard of any.

232 Q. Now, if I have understood your testimony, you claim that for all the services they rendered in relation to the management of this business, keeping these accounts, keeping you advised as to the money requirements, &c., they were to be paid nothing, but were to rely upon the commissions (means) that they would derive from future sales of the property to compensate them for the services they rendered. Am I correct in that?

A. You are.

233 Q. Now, how many sales of this property did they make for you?

A. They only made one for Mr. Hillyer & myself.

234 Q. Of course, in all this I am talking about the joint property—that is, the property that is involved in this case. What was the extent of that sale?

A. Eight thousand dollars.

235 Q. Then you took the property out of the hands of Kilbourn & Latta, or, after the dissolution, out of the hands of Kilbourn & Olmstead, and put it into the hands of Mr. Bull?

A. I never could find out in whose hands the property was after the dissolution and up to July, 1878, but we took the entire business out of their hands & gave it to Mr. Bull.

709 236 Q. So that the result of this would be, taking the agreement as you state it and your action in regard to the property that you have just mentioned, placing it in the hands of Mr. Bull to cut them off from that source of compensation and to get the service that they rendered from 1872 to 1878 for nothing?

A. The result of our taking our business out of their hands in 1878 was to cut them off from any future commissions.

237 Q. And you would get all that they had done for nothing?

A. They always charged commissions for the sales they made.

238 Q. And they only made you one sale?

A. Yes; of the joint property.

239 Q. Well, we are only talking of the joint property; we have nothing to do with the separate property in this case.

A. Aside from the commissions on the sale they made, the result would be that whatever services they did render us during that period we would get for nothing.

240 Q. During all this period, or at any rate up to 1877, it

would have been impossible to make sales without loss to you, would it not?

A. I made some sales individually at a profit.

710 241 Q. What year?

A. I think the last sale I made was to Galt, in 1876, I think, without examining the accounts.

242 Q. Can you tell what time in 1876?

A. I can by looking at the accounts. My individual account on file will show the date.

243 Q. And that piece of property was one of the most desirable in Washington, was it not?

A. I do not know that it was the most desirable, but it was certainly a very desirable piece of property.

244 Q. It was most elegibly situated in one of the most rapidly improving part of the city?

A. There was not much improvement going on then. I do not know that there was much improvement going on anywhere in 1876.

245 Q. Well, speaking in general now, is it not the fact that up to 1877 this property could not have been sold without incurring loss? I am speaking of this joint property.

A. As I was not here from May, 1873, until June, 1878, from personal knowledge I cannot answer the question.

246 Q. Through whom did you make that individual sale that you mentioned?

A. Through Kilbourn & Latta. I made another sale in 1878 through Mr. Latta. I made a sale the same summer to Mr.

711 Phillips, all on the same square, of the British legation.

247 Q. The same square that the Galt property is in—the individual property?

A. Yes; and all sold at a profit.

248 Q. You bought this property—I am speaking of the joint property—for a speculation. Now, why was it not sold prior to 1877?

A. I infer it was on account of the dullness of the real estate market.

249 Q. The holding of it, therefore, through that period was necessary to avoid loss, was it not?

A. I would not say it was to avoid loss, but the holding of it was necessary during that time to be able to make a profit out of it.

250 Q. So that during that period there was no chance for these brokers to get any compensation through sales of property without working an injury to you?

A. I think not, or they would have made the sales in order to get their commission. I have no doubt they were as anxious to make sales as we were.

Redirect by Mr. HILLYER:

251 Q. Was there any property purchased for you and your associates in 1872, except square 195, in respect to which the

712 firm of Kilbourn and Latta did not act as brokers and pro-

same fess and represent to us that they were negotiating for the in our interest, and that the price which was reported to us was the lowest price at which it could be obtained?

Mr. WILSON: I object to that question because it is leading and calls for the conclusion of the witness.

A. There was not.

252 Q. You testified, on cross-examination, with respect to the agreement between Sunderland, Hillyer, and Stewart and as to the order that any profits or losses were to be shared in, in the property which they jointly purchased. Was there ever any agreement of any kind between yourself & Hillyer & Stewart as to the sale of this property?

A. I do not think we ever had any agreement about it at all, except to purchase. My understanding was it was purchased on speculation and to be resold, but I think there never was any agreement or anything said, except we agreed to purchase in the proportions I have stated.

253 Q. If either one of those parties had desired to segregate his purchases and deal with them differently, was there anything
713 in the agreement which prevented his doing so?

A. Nothing.

254 Q. You spoke of it being agreed by the firm of Kilbourn and Latta that when they could obtain a commission from the seller in the manner you stated they would not charge a commission to you and your associates. Did they make any representation in that connection from which it could be inferred that they in any case were to act as the agents of the seller or in the interest of the seller in any manner?

Objected to by Mr. Wilson, counsel for the defendant, because it calls for the opinion of the witness, and not what representations were made.

A. They did not.

255 Q. In the conversation had by you and Mr. Hillyer with Latta after the account rendered and the discovery of the charge for care and management, did or did not Mr. Latta claim that there had ever been any agreement in that connection for compensation for those services?

A. In that conversation Mr. Hillyer asserted that he had made a positive agreement with the firm of Kilbourn and Latta,
714 and Mr. Latta asserted that no such agreement had ever been made.

256 Q. Did he assert that any other agreement or any agreement had ever been made?

A. He said that no agreement had ever been made in reference to the charge or whether they were to make the charge or not, but claimed that the charge made was a just one.

257 Q. Did you know at any time previous to 1878 that this twenty-six thousand dollars and upwards taken by the firm in the

last of December, 1876, had been abstracted from the funds of Sunderland and Hillyer or from your own individual funds?

A. I first learned it from the examination of the account rendered the latter part of June or the early part of July, 1878.

258 Q. Were there any reports made to you by either member of the firm or by Mr. Latta from which you could infer that there had been any such misappropriation of this money?

A. There never was any account rendered at all by either the firm or Mr. Latta from the 4th of September, 1873, until we received the accounts in the summer of 1878, and consequently I had no knowledge of such charge.

715 259 Q. Well, until that latter date did you have any means of ascertaining that the money which had been supplied by yourself or yourself and Mr. Hillyer had not been applied to the payment of either the joint or individual obligations?

A. I have no means of ascertaining.

260 Q. The account which was rendered by J. M. Latta to Sunderland and Hillyer shows a balance at the time of the rendition of the account in 1878 of five thousand dollars and upwards in favor of Sunderland and Hillyer and against Mr. Latta. Has that sum or any portion of it ever been paid by Mr. Latta?

A. It never has.

261 Q. (Showing letters to witness.) Give the dates of these letters, respectively, and state in whose handwriting they are.

A. They are respectively dated as follows: August 30th, 1877, September 25th, 1877, December 11th, 1877, December 17th, 1877, and January 4th, 1878. They are dated in the handwriting of and signed by James M. Latta.

Mr. HILLYER: I offer them in evidence and request the commissioner to mark them Exhibits T. S. No-. 18 to 22, inclusive.

THOMAS SUNDERLAND.

716 Subscribed and sworn to before me the 14th day of March, 1882.

WM. T. S. CURTIS,
Notary Public, D. C.

DISTRICT OF COLUMBIA, *ss:*

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN, JAMES M. LATTA, and J. F. OLMSTEAD. } Equity 7764.

I, Wm. T. S. Curtis, a specially appointed examiner to take the testimony on the above-entitled cause, do hereby certify that at the times and places aforesaid J. F. Olmstead, Curtis J. Hillyer, and Thomas Sunderland, witnesses on behalf of the complainants, were

produced before me and in the presence of counsel for the respective parties were by me each and severally duly sworn, before any question was put to them, to testify the truth, the whole truth,
717 and nothing but the truth relative to said cause; that the answers of each of them were taken down in my presence and reduced to writing, and that the deposition of each of them, as above set forth, was read over by them and signed by them, respectively, in my presence.

I further certify that the exhibits hereto attached, marked Exhibits T. S. Nos. 1 to 22, inclusive, and also Exhibits L, M, and N were, during the progress of said examination, offered and introduced in evidence by the counsel for the complainants, and they are herewith returned as part of these depositions.

I further certify that I am not of counsel for either of the parties to said cause nor am I in any way or manner interested in the result of this controversy.

WM. T. S. CURTIS, *Examiner.*

718 T. S. No. 1, p. 55–'8.

Hallet Kilbourn. James M. Latta. J. F. Olmstead.

Office of Kilbourn and Latta, real estate and note brokers, corner 15th and G streets.

WASHINGTON, D. C., *Sept. 17th*, 1874.

Thomas Sunderland, Esq., San Francisco, Cal.

D'R SIR: We enclose statement of payments becoming due up to January 1st, 1875. The heaviest is near the first proximo, for which we will draw in the usual manner.

We feel that we have "touched bottom" at last, and that the tendency of affairs will be "upward and onward," yet we expect that it will be dull in our line of business during the winter. Chief Justice Waite, Justice Hunt, E. L. Stanton, and others have purchased the Rhode Island avenue front of Att'y General Williams' square, and will improve in the spring with handsome residences. This will help your interest very much. When are you coming on?

Respectfully yours, KILBOURN & LATTA.

719 T. S. No. 2, p. 55–'8.

WASHINGTON, D. C., *May 18th*, 1875.

Thomas Sunderland, Esq., San Francisco, Cal.

D'R SIR: As an unusually large payment on lots 11 to 25, in square 195, amounting to $41,423.33, falls due on the 6th proximo, we have thought it best to specially advise you of the same before drawing on the Bank of California or sending to them for funds, as usual. We shall draw by telegram on the 29th inst.

Very respectfully, yours, &c.,

KILBOURN & LATTA.

T. S. No. 3, p. 55–'8.

WASHINGTON, D. C., *Sept.* 16, 1875.

Thomas Sunderland, Esq., Grand Hotel, San Francisco, Cal.

D'R SIR: By reference to the list of payments for the year 1875, heretofore furnished you, you will perceive that there will mature on the 2nd of Oct. prox. about $15,000. To meet these payments and make good a present balance of ac. we shall require
720 (say) $16,000. If this letter reaches you on the 24th, and you mail us a d'ft on the morning of the 25th, it will, doubtless, reach us in time, but to prevent accident please telegraph us when the remittance is made. One-half of the general tax of 1875–'76 will be due on the 1st of November next, after which a penalty attaches of 2% per month.

The book sent to us by express was duly received.

Truly yours, KILBOURN & LATTA.

T. S. No. 4, p. 55–'8.

WASHINGTON, D. C., *Dec.* 3*d*, 1875.

Thomas Sunderland, Esq.

D'R SIR: There are inqu-ries occasionally for lots belonging to you and those of Sunderland & Hillyer, and I want to know, first, if you will sell lots in square 138, and, if so, at what price? 2d, will you sell a lot on the north end of square 115, fronting the circle, 30 or 50 feet front by 150 ft. deep, and at what price? In both cases parties propose building houses to cost from $15,000 to $20,000.

Real estate is dull here, as it is everywhere East, & a little depressed in price.

Truly yours, KILBOURN AND LATTA.

721 T. S. No. 5, p. 55–'8.

WASHINGTON, D. C., *June* 2*d*, 1876.

Thos. Sunderland, Esq., San Francisco, Cal.

D'R SIR: The following payments will become due and payable during this month on the property of Sunderland & Hillyer, viz:

June	3.	To H. A. Willard, on sqr. 151, interest		$565 94
"	14.	" A. Muller, on sqr. 66, interest		605 00
"	"	" " " principal		20,000 00
"	22.	" A. B. Stoughton, on sqr. 93, principal		31,700 00
"	"	" " " interest		958 92
				$53,829 86

And on that for your private ac. as follows, viz:

June	14.	To W. W. Corcoran, sqr. 153, int.		752 50
"	"	" W. R. Riley, sqr. 67, int.		270 00
		Total		$54,852 36

Col. Hillyer has been & is trying to negotiate a loan, as talked of between you, but as yet has met with but a slight encouragement; have no response to our telegrams of last week; suppose you must be out of city. Please advise us at once relative to foregoing payments, if you have not done so.

Very truly, KILBOURN AND LATTA.

722 T. S. No. 6, pp. 55–'8.

WASHINGTON, D. C., *June 19th*, 1876.

Hon. Thomas Sunderland, San Francisco, Cal.

DEAR SIR: We have affected a sale of the north end of square 138 to Mr. Wm. Galt, a prominent business man of this city, on which he proposes to erect a handsome residence for his own use. The piece he takes has a front of 270 feet on Conn. Ave., commencing at the north point of the square and contains 13,768 sq. ft. We sold it for $1.20 pr. sq. ft., amounting to $17,210. We took in exchange one lot on 2d St. between D & E Sts., and one on New Jersey avenue between E & F Sts., and allowed $6,000 for the two, he paying the balance, $12,210, in cash. We made the sale after full consultation with Col. Hillyer, and we consider it the best sale made in the northwest portion of the city in a long time. The two lots taken in part payment are good building lots & free & clear of encumbrance. Mr. Galt will erect a first-class improvement on the lot sold him, and already a friend of his is negotiating for property in the same vicinity. We figure that this lot had cost you up to this time (without interest) about 50c. per foot, which leaves a
723 very handsome profit for these dull times. The course of improvements is in the direction of yours and Hillyer's property, & there is no doubt of its steady enhancement in value. We consider the sale to Mr. Galt a very encouraging omen. There is a large amount of building going on this season in spite of the dull times, and much of it is near the "Honest Miner's Camp."

Very resp'y yours, KILBOURN & LATTA.

T. S. No. 7.

WASHINGTON, D. C., *Dec. 12th*, 1876.

Thomas Sunderland, Esq., San Francisco, Cal.

D'R SIR: There is such a disturbed condition of affairs here just now that it is impossible to raise any money, & must remain so until after the 14th of Feb'y. We must have $10,000, & should have 15, by the 25th inst. to carry things through. H. seems powerless to help at present, & the only man to call on is yourself. We have made every effort rather than call on you after you have said you could furnish no more means. This little waive over, we will
724 try & make the property take care of itself. This will reach you by the 20th inst. Let me hear from you by telegram on the 21st, saying you have placed to our Co. in N. Y. 15, if you

can, & certainly 10. Things have been brighter here than anywhere else in the country until since the election. They talk of war, & such nonsense frightens money.

Truly yours, J. M. LATTA.

T. S. No. 8.

WASHINGTON, D. C., *Jan'y 11th*, 1877.

Thos. Sunderland, Esq., San Francisco, Cal.

D'R SIR: On the 1st day of this month the firm of Kilbourn & Latta was dissolved by mutual consent. Kilbourn & Olmstead succeeded to the business of the firm with the exception of your property—that is, the property of Sunderland & Hillyer & Thos. Sunderland. The management of this property I retain. All communications and remittances you will please in the future address to me.

Truly yours, J. M. LATTA.

725 T. S. No. 9.

WASHINGTON, D. C., *Mar. 29th*, 1877.

MY DEAR HILLYER: Yours of the 4th inst. is at hand. When your letter came I had been making an effort to sell Sharon the Stewart mansion, & Stewart to take in part payment the indebtedness of Sunderland, and for that indebtedness I proposed St. should take real estate, which would have resulted in just the same to you. I had two appointments to see Sharon after receiving your letter, but the first was broken by a session of the Senate, & the second by his being called to New York. I therefore did not see him on the subject after yours arrived. Previous to the reception of the Stewart trade I had seen him & talked over the value & condition of the real estate of S. & H., and had given him so favorable a report as to make him feel easy about about S.'s indebtedness to him, which had the effect of making the trade with Stewart less desirable. Had I known at the beginning of Stewart's proposed trade I could have left some things unsaid that might have induced him to consum-ate the purchase & occupy the house, which would have been of advantage to the property. He said to me Sunderland & he
726 had so long been friends & had so many business connections he hesitated about suggesting security. Sunderland can, therefore, with the greater propriety urge him to make the purchase. I will enclose a statement of the cost, without counting int., of the different pieces of property until having an encumbrance on them, and when they are due, so that you may make the trade, if possible, before the payments become due, that he may provide for some of them. I have been looking out for money since the 1st of Jan'y, but so far have not been offered the am'ts at the rate of int. satisfactory. I was offered $20,000 at 9 pr. ct. on sq. 195, for which you paid $52,500. I offered to take $25,000 on that at 8. I was offered $25,000 at 10 pr. ct. on 93, for which you paid $39,700. I offered to take the am't at 8 pr. ct. other sums on other property at about the same

difference. Objection is made to loaning on property held as trustee, and it may be necessary to have the property *to* put in the name of some one in fee simple. See Sunderland on this point & give me full instructions what to do. Draw up these & have both sign & witness. I would suggest it be put in your name, as Sunderland's family are absent. Money has been hard to find, but if the Southern
727 troubles are settled soon we hope plenty of money will be offered. The $54,500 due on sq. 155 belongs to an estate. Boutwell, who has $5,500 of an interest in it, wants his money now, and has been in correspondence with the administrators of the estate with a view to their letting $40,000 remain in the property for 5 yrs. at 6 pr. ct., but so far has received no definite reply. I am in hopes to get $35,000 of that falling due in May & June carried over, which will leave something like $50,000 to provide for of principal & some int., besides special taxes I shall have to pay in clearing the property borrowed on. A decision has been rendered by the Dist. supreme court adversely to the special taxes, Olin, McArthur, & Humphries in the majority & Cartter & Wylie dissenting. The case goes to the Supreme Court; but when borrowing these assessments appear as a lien & must be paid under protest. Galt is building, on the point of 138, what promises to be a good house. Three houses are being built on R. I. Ave., bet. 17 & 18 Sts., by desirable parties. Young Denver, the son of the Gen'l, has offered 1.25 cash for 40 feet more on same front to build a double house, and almost every day parties are in to make inquiries about lots. I have been offered $25,000 cash for my house twice within a month by separate parties.
728 We have hopes that quite a lot of purchases will be in the market by the 1st of June. Most persons are purchasing for actual possession or immediate improvement for personal occupancy. There is no speculative demand, & therefore it is for property not very remote from the well built-up part of the city. I am glad to hear you are succeeding in your practice, and only regret your absence from your family & friends here. I have never heard from Sunderland, and as this is a lengthy letter and I don't want now to duplicate it, I wish you would send or take it to Sunderland soon, and then you write me your conclusion. With kind wishes for yourself & regards to Sunderland,

I am sincerely yours, J. M. LATTA.

T. S. No. 10.

WASHINGTON, D. C., *Nov. 11th*, 1877.

C. J. Hillyer, Esq., Virginia City, Nev.

D'R SIR: I wrote you on the 30th of August from here; again on the 20th of Sept. from Goshen, and telegraphed you on the 5th inst., and have no reply to either. I don't understand it.
729 In a partial settlement of our affairs Jeffries became the bondsman of Kilbourn & Olmstead to me in $35,000. They have been either unwilling or unable to fulfill on their part the agreement, and a controversy has grown out of it, & he is their att'y. As they

were fast drifting, I thought, into bankruptcy, diverting the assets of the firm, seeking to bring in an outside operation of mine as an excuse for not settling & paying me, I yesterday, in self-defence, filed a bill asking the appointment of a receiver for the firm, on which an injunction was granted against their intermeddling with the assets of the firm. Jeffries may become liable on his bond, and therefore increase any hostility he may feel. This was a painful thing to do, but as I don't think either of them responsible I felt I must protect myself. Their conduct, however, went far toward relieving me of any delicacy. K.'s paper has gone to protest at two banks recently, O. being on one for $5,400. I hope this action of mine will secure that which is owing S. & H. I make this statement this full to disabuse your mind of anything you may have heard & not for the purpose of having the information go beyond yourself, as I have no desire to injure any of them. When here in August I
730 was offered what money would be wanted this fall, but, being in hopes of making some sales & not wanting any until Oct., I declined it on the promise, as I understood, that I could have it in Oct. When I applied for it, it had been used. The loan on 156 was made of Jeffries. I wrote him at once, telling him of my disappointment. He replied he must have it and would tel. you for it. When I returned he said he had not done so, & I did. He has given K. & O., who are the trustees, instruction to sell. I have about exhausted every source here to find money—plenty of it, but not to loan on unimproved property. I shall go to Phil. this week & see if I can get it there.

The following are the am'ts wanted:

The int. on 156, Oct. 10, '77	$2,000
" " " 155, Nov. 24, "	1,575
" " " 115, " 23, "	720
	$4,295
Bro't forw'd	$4,295
The int. to Thompson, 4th Dec.	1,575
" " " Riggs, 4th Dec.	350
Taxes, Nov. 30	3,500
Note of Muller's (in bank), Dec. 20	2,700
Int. to " " "	440
" on 153, Dec. 4	525
" " 67, Jan'y 6	270
	$13,655

731 This note of Miller's might be run along for six months, but everything also must be paid.

Now, what, if anything, can you and Sunderland do to relieve things? I shall continue to use every effort to borrow, but we can't pay without money.

Truly yours, J. M. LATTA.

P. S.—Please return that letter of K.'s I sent you Sept. 20th.

Yours, L.

T. S. No. 11.

WASHINGTON, D. C., *Nov. 19th*, 1877.

Hon. Thos. Sunderland, San Francisco, Cal.

D'R SIR: I have been expecting you here for almost a month. I must have some money and it is not to be borrowed here on unimproved property; at least I fail to find it. There is owing $45,000 on 155 that can run for several years at 7 pr. ct. if the int. is promptly paid. It is due the 24th inst., $1,575. There is due on 115, May 23, '78, $24,000; the int. on it is due the 23 inst., $720; the gen'l taxes are due the 30 inst., $3,500, & draw 2 pr. ct. per month until paid. There remains a call loan of $10,000 at 7%
732 on 195, the int. of which is due Dec. 5, $350. The int. on the loan I made last June of $35,000 for 1 yr. at 9 pr. ct. will be due Dec. 4th, $1,575. There is due August Muller & note in bank of next Dec. 20, '77, of $2,700. Int. due him same date is $440. There is due Muller $9,500; it is part due & drawing 8 pr. ct. When this $2,700 is paid the bal. is to lay at 8%. There is past due, but extended for 1 or 2 yrs. from June 4, '77, at 8 pr. ct. on 153, $15,000, the int. of which is due Dec. 14th, $525. There will be due July 6th, '78, $9,000 on 67, the int. on which will be due July 6th, $270. There is past due & held over at 8 pr. ct., $7,043 on 92, the int. quarterly, $140.86, due Jan'y 23, '78, making a total wanted up to about Jan'y 1st, 1878, of $11,800, the principal part by the 30th inst. Hillyer has sent $5,700 this fall. I was in hopes I could make sales sufficient to meet future liabilities, & so said to Hillyer last spring, but I have been unsuccessful so far. But I must have money to meet int. promptly if the cr. of the firm is to be sustained. When we fail to do this the extensions will stop & the property will be sold out under the trusts if not paid. If I could have $8,000 by the 30th & the other $4,000 by the 15th of Dec. it would do. Let me hear from you by tel. at once. The
733 city looks very prosperous, but it has shared the fate of all other places.

Truly yours, J. M. LATTA, 1417 *K St.*

P. S.—Please direct to my house.

J. M. LATTA.

P. S.—You will get this by the 26th. I shall expect to hear from you by the 27th. J. M. L.

T. S. No. 12.

WASHINGTON, D. C., *Nov. 20th*, 1877.

C. J. Hillyer, Esq., Va. City, Nev.

DEAR SIR: Yours of the 12th & 13th inst. & your tel. of same date have been rec'd. The $2,000 you sent me was paid Jeffries, int. on 156, within an hour after I rec'd it. My letter to you of the 11th inst. you have by this date & will explain away some of your

impressions, I hope. Taking mine of the 30th of Aug., 20th of Sept., with this of the 11th inst., & you have a full history of why the Willard matter was not paid. I had a prospect of borrowing money & therefore did not write you for it. As I stated in mine of the 11th inst., I supposed Jeffries had tel. you for the am't
734 Oct. 10th. It encourages a fellow to have his letters answered. I enclosed a letter of K.'s in mine of the 20th of Sept. & asked you to return it. Please do so, as I may want to use it. I wrote Sunderland yesterday, giving him a statement of how your matters stood. He will get that on the 25th. I asked him to tel. a response. Sq. 151 was sold Oct. 1st, '77, to L. Jeffries for S. & H., as their int. may appear, for the sum of $20,360.48; cash, $2,500; 1 note at 1 yr., 6%, 8,930.20; 1 note at 2 yrs., 6%, 8,930.20, int. semi-annual. The note has been cancelled & is in my possession. Who is to look after this? If I can borrow the money wanted now I will tell you; otherwise you may know I rely on you & S. to furnish it. I will try & keep you fully advised.

Truly yours, J. M. LATTA.

T. S. No. 13.

1417 K St., Washington, D. C., *Nov. 23rd*, '77.

Thos. Sunderland, Esq., San Francisco, Cal.

D'r Sir: In my letter to you of the 19th inst. I did not
735 think it necessary to tell you anything about the trouble between my late partners & myself. I said something about it in my letters to Hillyer of the 30th of Aug. & 20th of Sept., & he advised me he sent you those letters. I wrote him more fully about it on the 11th inst., which, I presume, he has sent you. It is only necessary to say that after repeated promises to pay the Willard matter out of moneys left in their hands for that purpose they suffered the property to be sold, N. L. Jeffries becoming the purchaser, & they, Kilbourn & Olmstead, paid the cash payment, $2,500, out of the moneys left in their hands. They are under protest for $24,537. In this — to my bill asking for a receiver for the firm, filed yesterday under oath, they admit this remains in their hands belonging to Sunderland & Hillyer about $2,700, & assert they are the brokers of S. & H., & that I simply hold the title to your property, but am not your agent in any sense. Now, I want authority at once to show I am authorized to act for you & an order on Kilbourn & Olmstead to deliver all papers & vouchers pertaining to your affairs into my hands, and so separate authority & order from yourself & Hillyer in reference to the Sunderland & Hillyer property & papers.

736 Our dissolution or agreement was in parole & they deny your business was reserved by me. I cannot transact the business without the papers. The condition of your business admits of no delay in this matter. I am again disappointed in a loan & must tel. you for the money immediately wanted.

Truly yours, J. M. LATTA.

T. S. No. 14.

1417 K, WASHINGTON, D. C., *Nov. 27th*, 1877.

Thos. Sunderland, Esq.

D'R SIR: Principally all your papers were this morning rendered to me; still I want the authority to act as your agent. I telegraphed you & H. this morning saying I wanted 8 M; hope between you to get the money by tel.

Truly yours, J. M. LATTA.

T. S. No. 15.

WASHINGTON, D. C., *Feb'y 21st*, 1878.

C. J. Hillyer, Esq.

D'R SIR: On the 18th inst. I telegraphed Sunderland to Virginia City that Reiley wanted his $9,000 paid. I had written him
737 on the 4th of Jan'y to the same effect. To neither have I had any reply. Can you explain for him & let me hear from you at once? A rumor prevails here that Stewart has recently made $300,000. Is it true? I hope it is and that you & S. have made as much more.

Truly yours, J. M. LATTA.

T. S. No. 16.

WASHINGTON, D. C., *May 2d*, 1878.

C. J. Hillyer, Esq.

D'R SIR: There will be due on the 24th inst., as I advised you Jan'y 12th, '78, & previously, on sq. 115, $24,000, & int., $720 = $24,720, & on the same day the int. on 155, am't'g to $1,575. The note of $24,000 has been hypothecated at Riggs' Bank for a loan of $11,000, which, with the int. on the note, $720, must be paid. The bal. can lay until August, & perhaps longer. The int. to Thompson will be due June 4th, $1,575; August Muller, June 14th, $240; Mr. Riggs, June 6, $350. I must rely on you for these am'ts. Then the bal. of taxes are about $2,500, not to mention Sunderland's obligations. He says he can do nothing. If I fail to make safe, his property must go. I shall make no promises until I hear
738 from you, which I had expected long since. I have made every effort to negotiate a loan, but you can't do it on this unimproved property.

Truly yours, J. M. LATTA.

If these taxes are not paid the property will be advertised in June.

J. M. L.

T. S. No. 17.

WASHINGTON, D. C., *May 25th*, 1878.

Thom. Sunderland, Esq.

D'R SIR: I have a proposition to fund the entire debt on the property & yourself & Hillyer, at 7%, with a stipulation to release

upon sales being made. I want to submit a statement of cost of property, & for that purpose I want a verified copy of books sent you several years since, made out by Mr. Bull, as he is having something to do with this. If you would have a copy made & send the original, he could certify to the correctness of the statement. I hope you will attend to this at once, as large payments are due and unprovided for. Kilbourn & Olmstead never paid any part of that $2,715. They admit they owe S. & H.

Truly yours, J. M. LATTA.

739 T. S. No. 18.

WASHINGTON, D. C., *Aug. 30th*, 1877.

C. J. Hillyer, Esq.

D'R SIR: I have been here ten days trying to get Kilbourn & Olmstead to pay this matter of Willard's and to adjust those matters of which I wrote in mine of the 7th inst. They say now they will be ready to-morrow. I must leave for home to-day to meet friends who are to arrive on Saturday. I found the fellows who did the grading could not wait for their money & I paid them in full—

Of the balance due them	$1,727 45
Bal. water tax I paid	550 29
	2,257 74

By an error the half of gen'r'l tax on 195 was not paid, $321, & lot 12, sq. 570, of T. S.'s, 34.89. These I paid. I then paid August Muller 1,500 on that note, & the bank agree, & he, too, to extend it for 90 days from the 20th of Sept., the date to which he had the note extended, making a total of $4,113.83. Had I known what this grading was going to am't to I should not have advised it, though it will probably be a good investment. The alley has been commenced & will be graded at once. It will stimulate others to grade & put the sq. in shape for market. Mr. Willard, a rich
740 lumber merchant of Georgetown, has bought the east half of lot 9, 158, & is going to build a handsome house on it at once. You own the west ½ of 9 & all of 8 & 10. The south front of 159 is about all covered with good residences from having been erected this season. The south front of 158 is next in order. K. & O. say they had a trade in view with Willard, to which he had agreed, but backed out after they had used the money. There is a defect in his deed of trust, which K. says he would not act under until corrected by consent of me or by order of the court. I don't know how much it am'ts to. How much the boys are to blame for using the money depends somewhat on Willard's side of the story. As he don't speak to me, I have had no interview with him. Developments in the future will probably determine that. There is no money to be had here now on unimproved property. I await your instructions as to what I shall do about this if the boys fail to pay it. What I say to you is between you & I confidential. I shall return here by the middle of Oct.

Very truly yours, J. M. LATTA.

741 T. S. No. 19.

GOSHEN, IND., *Sept. 20th*, 1877.

MY DEAR HILLYER: This morning I received a note from Morris enclosing this ad., and by turning to the Star I find it. I have had two letters from K. since, but no mention is made of it. I enclose a letter from him in reply to your tel. & my letter, which speaks for itself. Please return when read, as it refers to other matters between us. O., signing the name of the firm, giving me statement of ac't, mentions $5,450.00 to Willard. Could I construe it otherwise than that they had paid it? I then wrote you mine of the 4th of July giving statement of payments out of the $35 M. I am satisfied now it was written with the intention of deceiving me in order to accomplish another matter. I have to-day written Davage, sending a retainer & asking him to stop the sale if he can, on the ground that one of the trustees has the money at his possession belonging to the *cest-i que trusts* with which to pay the indebtedness. I have long since lost all faith in Olmstead, but did suppose K. was honest, & hope I shan't have to loose faith in him, too. I wrote you on the 30th Aug., to which, as yet, I have no reply.

Truly yours, J. M. LATTA.

742 T. S. No. 20.

1417 K ST., WASHINGTON, D. C., *Dec. 11th*, 1877.

C. J. Hillyer, Esq.

D'R SIR: Yours of the 1st is at hand. Mrs. Alexander tells me she sent you a slip from the "Starr" noticing the suits of K. & L. When you have seen that, is it necessary I should say Jeffries' statement to you that I had brought the suit as the trustee of S. & H. is simply a lie (as we say in French). The suit is in my own name, pure & simple, for my own protection. Incidentally it may benefit, among the other creditors of K. & O., yourselves. In the sum of near 40 M, unsecured, they owe is mentioned the sum due you & S.; beyond that your names are not mentioned. I presume the "Starr" intended to say the "Pool" property when it used your names. Your property is in no way affected by our controversy farther than the $2,700 they admit they owe you. Your interests only so far as their withholding a few of your papers may embarrass me in getting at information I may want. They swore in their answer if the court would remove the restraining order as to their money in bank they would apply this $2,700 in paying the taxes on your property.

743 The court granted that, but they did not pay a dollar, & 2 pr. ct. was added for Dec. They say upon an order from you they will deliver the bal. of the papers. This you had better send me. It is for you to say what shall be done about their indebtedness to you. I enclose a release, which I should like signed by yourself & Sunderland. I want to be relieved from any responsibility on my part, so far as their indebtedness to you is concerned. The question as to who is your agent and authorized to raise & ex-

pend money should not remain in doubt. It would impair my usefulness in raising money or making negotiations of any kind. The $2,500 was rec'd on the 1st inst. Out of it I paid the int. on 115, $720, & the int. to Thompson, $1,575, & sundries, $35. I have no notice of int. on 155, due the 24th ult. On the 14th inst. there is due the int. on 153, $600, instead of $525, as I thought, the notes being extended at 8 instead of 7 %. On the same day the int. is due August Muller, $410, & on the 24th inst. his note in bank for $2,700, & he says he told you last spring he wanted to leave but $6,000 out that property, & therefore wants $800 more by Xmas. I will pay him his int. on the 14th & try & get the note held over by the bank until after the 1st of Jan'y. The $600 on 153 I can probably get held. The taxes remain unpaid. Have Sunderland remit me the money so that
744 I shall get it by the 29th inst. He should tel. it by the 26th. I can then pay the taxes by the 30th & save the 2% for Jan'y. I shall need to cover the whole $10,500. About $\frac{4}{5}$ of 156 was filled to grade, but $\frac{1}{5}$ is a pond. Hoxie offers to furnish the pipe for a sewer up 18 St. from the P-St. sewer, but says he has no money to pay for the work. It will cost about $200. The sewer will be wanted some day, & I think I had better have it done. It is the cheapest way to get rid of the water, & I am in constant expectation of a notice from the board of health about it. The all-y in 158 can't be opened until the comm. get an app'n. When that is done I hope to sell some of that. Two lots on the north side of Mass. Ave., bet. 17 & 18, were sold recently for 60 cts. A very genteel house has gone up on the S. W. cor. of P & the Circle. Eight 3-story bricks are going up on it bet. 20th & 21st or sq. 97. The cheapness of material is inducing the building of a good many small brick houses in the N. W.—on 18th, 19, R & S, &c. The hill, sq. 137, is being graded to 4 ft. I am in negotiations with some parties to build on some of your property & take houses in payment for the ground. Money on improved property can now be had at 7, while on unimproved none seems to be had.

Truly yours, J. M. LATTA.

745 T. S. No. 21.

WASHINGTON, D. C., *Dec.* 17, 1877.

Thos. Sunderland, Esq.

D'R SIR: The following is a copy of a letter I to-day wrote Hillyer: Yours of the 6th inst. is at hand. To begin with, let me recall the paragraph of mine of 11 Jan'y, '77. I say the management of the property of S. & H. was "retained by me" in the dissolution & not, as you say, was "turned over to me." I showed these letters to K. & O. at the time, & they acquiessed in them &, in recognition of that fact, they requested & I did substitute my note for that of the firm in the bank, on which money had been borrowed, with bonds as collateral, on act. of S. & H., and the bonds were charged to me by O. on the books. K. & O., in their answer, do say they offered to pay me the am't of $5,200 "upon condition that I would execute

certain papers between us" & not, as you say in your letter, "that I made the condition." If they have sent you true copies of these papers please refer to page 18, 2d paragraph, & you will observe your error; but let me assure you they never offered to pay me the money, & I am told they never did Willard. They owed $5,643, being more than enough to pay Willard. Why did they not pay him? And
746 in this connection let me again remind you of Kilbourn's letter to me in which he said they would arrange this matter, which was sent you for perusal & then to be returned to me, which has not been done, though I have requested it twice, as it refers to another matter between us. When, at your request, one consents to take the title to your property & executes notes as trustee & individual am't'g to $450,000, he must to a certain extent feel his reputation involved in the payment or non-payment of these obligations. Under these circumstances would you, were you the trustee, want the management of the property to pass beyond your control while these obligations remained unpaid, especially into the hands of parties bitterly hostile to you? Say there was a necessity for borrowing $50,000 & they present me notes & deed of trust to execute, which I do, & they receive the money & appropriate it to their own use, where would I be? Do you want me subjected to any such contingency? The title wants to be with the management. Decide for ourselves where the one shall be & there place the other. My bill is to relieve myself from liability in all matters pertaining to the firm of
747 L. & K. & to collect $6,890 they owe me. Please execute the release I sent you & that will remove one of the obstacles to an arrangement of the differences of K. & L. It was not my purpose to deprive them of the opportunity of finding a purchaser for any of the property & getting their com'ns, but should extend the same privilege to any brokers who might bring me a purchaser, just as I do with my own. When I have that release I no longer have any occasion for looking after my liability to you in that matter & only want the question of agency decided. Either I or they have sworn to a tissue of falsehoods. I am engaged now in taking testimony in this case that will disclose who it is. I regard their suit against me an effort at bluff; another might call it blackmail. I expect to puncture it shortly & see it collapse. Now, Hillyer's strong personal liking for K. & Jeffries, I think, prejudices him a little in K.'s favor. I don't find any fault with him for that, for I like to see a man stick by his friends, but as Hillyer's letter of the 6th inst., which he says he showed you & you concurred in, was written under a misapprehension of the facts as they are set forth in the bill and answer filed in court, I thought you could best comprehend
748 the matters if I sent you this copy of my letter to him, in which I point out some errors. If you have that letter of K.'s to me I refer to please send it to me at once. I think you may have it, as Hillyer says he forwards my letters to you. You will get this on the 24th, and I hope you will tel. me the $10,500 on the 26th, that I may receive it on the 29th, as the 30th is Sunday & the 31st is such a busy day it is difficult to get a chance to pay the taxes, on

which, if not paid before the first, there is an additional 2 pr. ct. added. Why don't you write me? When are you coming on?

Truly yours, J. M. LATTA.

T. S. No. 22.

WASHINGTON, D. C., *Jan'y 4th*, 1878.

Hon. Thos. Sunderland, Palace Hotel, San Francisco, Cal.

D'R SIR: Your tel. of the 29th was rec'd & the money to-day, $8,500, & I have paid the $2,700 note of Muller's in bank. Paid the int. on 155, $1,575, & the int. to Riley on 67, $270, & to-morrow morning Miller is to come for the $800, which will reduce the indebtedness to him to $6,000. I paid him his int. on the 14th ult., $410, 749 & Mr. Riggs his int. on the 8th ult., $350. You did not say where K. & O. would be directed to pay the $2,000. I supposed on taxes, but they have not done so. Enclosed please find notice from bank of $9,000, due on 67 to Riley. The statement I rec'd from K. & O. They do not permit me to see the books; said this note would be due July 6th, 1878. I so reported to you. I received this notice to-day. I went at once to see Riley about letting it stand. He says he must have the money at once; that he has been building & owes it. This is your individual property. I hope you will telegraph the money at once. He agreed to wait ten days for it.

Truly yours, J. M. LATTA.

EXHIBIT N.

WASHINGTON, D. C., *Dec.* 17, 1877.

C. J. Hillyer, Esq.

D'R SIR: Yours of the 6th inst. is at hand. To begin with, let me recall the phraseology of mine of Jan'y 11, '77. I say the management of the property of S & H was "retained by me" in the dissolution, & not, as you say, was "turned over to me." I showed these letters to K. & O. at the time & they acquiessed in them, & in 750 recognition of that fact they requested & I did substitute my note for that of the firm in the bank on which money had been borrowed, with bonds as collateral; on ac't of S. & H., & the bonds were charged by O. to me on the books. K. & O. in their ans. do say they offered to pay me the am't of $5,200 upon condition that I would execute certain papers between us & not, as you say in your letter, that I made the conditions. If they have sent you these copies of these papers, please refer to 1, 9, 18, 2d par., and you will observe your error; but let me assure you they never offered to pay me the money, & I am told they never did Willard. They owed $5,643, being more than enough to pay Willard. Why did they not pay him? & in this connection, let me again remind you of the letter of K. to me in which he says they will arrange this matter, which was sent you for your perusal & then to be returned to me & which has not been done, though I have requested it twice, as it refers to another matter between us. When, at your request,

one consents to take the title to your property & executes notes, as trustee & individual, am't'g to $459,000 he must, to a certain extent, feel his reputation involved in the payment or non-
751 payment of these obligations. Under these circumstances, would you, were you the trustee, want the management of the property to pass beyond your control while these obligations were uncancelled, and especially into the hands of parties bitterly hostile to you? Say there was a necessity of borrowing $50,000 & they present me notes and deed of trust to execute & they receive the money on them & appropriate it to their own use, where would I be? Do you want me subjected to any such contingency? The title wants to be with the management. Decide for yourselves where the one shall be & then place the other there. My bill is to relieve myself from liability in all matters pertaining to the firm of K. & L. & to collect $6,890 they owe me. Please execute the release I sent you & that will remove one of the obstacles to an arrangement of the differences of K. & L. It was not my purpose to deprive them of the opportunity of finding a purchase- for any of the pr-perty & getting their com'ns, but I should extend the same privilege to any brokers who might bring a purchaser, just as I do with my own. When I have that release I no longer have any occasion for looking after my liability to you in that matter, & only want the question of agency decided. Either I or they have sworn
752 to a tissue of falsehoods. I am engaged now in taking testimony in my case that will disclose who it is. I regard their suit against me an effort at bluff; another might call it blackmail. I expect, when the time comes, to explode it as a bubble. Don't fail to have that $10,500 here by the 29th, & to accomplish that it should be sent by the 26th.

Truly yours, J. M. LATTA.

EXHIBIT M.

VIRGINIA CITY, *Dec. 6th*, '77.

J. M. Latta, Esq.

DEAR SIR: I have received your two letters of the 23d & 27th ult.; also copies of the pleadings in the suit of yourself against Kilbourn & Olmstead; also a letter from Jeffries giving a full explanation of the Willard matter. His explanation does away with my first impression as to the conduct of K. & O. in that connection. I am satisfied that, however unauthorized their action, they intended to fully protect our interests, and, what is more to the point, I am satisfied that we are more fully protected in that respect. Jef-
753 fries says in his letter—and I see it also stated by Kilbourn in his answer—that prior to the sale of the Willard property K. & O. offered to pay to Willard the 5,200 in their hands or to pay it to you for the purpose of being paid to him, and that you declined except upon a condition respecting transactions between you and Kilbourn having no connection with our business. I do not precisely understand why this offer should have been declined. My desire is to keep entirely clear of the complications between

yourself & Kilbourn & Olmstead. I do not at present see that Sunderland and myself have any cause of complaint against them, and I do not think it either necessary or proper that we should be in any way mixed up with this litigation. We shall do pretty well just now if we succeed in attending to our own business & meeting its demands, without taking part in a controversy much to be regretted between parties with both of whom our relations have hitherto been friendly. With reference to your request for written authority as our agent, I am somewhat at a loss what to say. If by this is meant authority to commence or continue litigation with Kilbourn and Olmstead, then, for the reasons above stated, deeming the litigation unnecessary,
754 I prefer not to authorize it. If it be for the general management of our business, I presume no further authority is necessary. In fact, I am a little confused as to the precise standing of this agency at present. In 1875, at the suggestion of Sunderland, I made an arrangement with the then firm of Kilbourn & Latta to manage the property standing in your name as trustee, substantially as follows: They were to have a general oversight of the property and look after our interests. For small matters, such as payment of taxes, interest, street assessments, &c., they were not to make any charge, but for sales & negotiations of loans, &c., they were to receive the regular commissions. No other express arrangement has ever been made to my knowledge. In January last I received a short letter from you announcing the dissolution of the partnership, and stating that the business of Sunderland & Hillyer had been turned over entirely to yourself. I supposed this was an amicable understood arrangement between you & K. & O., & was satisfied with it. From one or two communications subsequently received from Kilbourn (in which nothing was said as to this transfer of our
755 business) I was convinced that he and Olmstead still supposed they had an interest in it, and were giving attention to it. When I was in Washington in April last my conversations as to negotiations of loans were had almost entirely with you. I still found that the other business as to the protection of the property and disbursements of funds was being conducted by K. & O., evidently with your approbation, and the accounts were kept by them, so far as I could see, about the same as before the dissolution. From the account sent me I see that this course was continued up to a very recent date. I did not inquire particularly into the relations between you & O., but I supposed there was an amicable understanding between you by which they were still interested in our business. This did not surprise me, for I could well understand that under the original arrangement it would be an object to them to retain the opportunity to make sales and realize the commissions. I have recited these facts so that you might see why I am in some doubt about this agency business. Were K. & O., in doing what they did, your agents or ours? If, as I had been led to suppose, they
756 were ours, then it would not seem to me quite fair to withdraw from them their share of the business, which I hope before long will be profitable. While under our arrangement we

were at liberty to withdraw this business from the firm of Kilbourn & Latta, still there are some equities arising from the attention which has been given to it which I recognize, & which without some reason I do not wish to attempt to distribute arbitrarily between the members of the firm. I wish you would settle this matter between yourselves, but settle it definitely, and I shall be satisfied. If you cannot, Sunderland and myself will determine what it is our interest to do and what we ought to do. I will write to Kilbourn & get his views about it.

Very truly yours, C. J. HILLYER.

757 *Defendants' Testimony.*

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN, JAMES M. LATTA, and J. F. OLMSTEAD. } Equity No. 7764.

Depositions on behalf of the defendants in the above-entitled cause.
Wm. T. S. Curtis, examiner.

WASHINGTON, D. C., *Oct.* 12, 1882.

Appearances: Hillyer & Ralston, for complainants, and Mr. Wilson and Mr. Totten, for defendants.

HALLET KILBOURN, a witness on behalf of the defendants, being first duly sworn, testified as follows:

By Mr. WILSON:

1 Q. State your name, age, and residence.

A. My name is Hallet Kilbourn; I am fifty years of age; my residence is Washington.

2 Q. Are you the Hallet Kilbourn who is named as one of the defendants in this suit?

758 A. I am.

3 Q. And you were a member of the firm of Kilbourn and Latta?

A. I was.

4 Q. Do you know the complainants in this case—Curtis J. Hillyer and Thomas Sunderland?

A. I do.

5 Q. When did you first become acquainted with them?

A. I think about 1871.

6 Q. Do you know of their purchasing any real estate in the city of Washington? And, if so, state about what time these purchases were made and such facts and circumstances in connection with their purchases and your relation to them as you can now remember.

A. I think Mr. Hillyer bought some property in 1871 and Sunderland and Hillyer made their purchase in 1872.

7 Q. It is alleged in the bill in this case that Sunderland and Hillyer and Wm. M. Stuart had associated themselves together for the purpose of making purchases of real estate in the city of
759 Washington, and that, "for the purpose of making the purchases in a manner the most advantageous to their interests, the plaintiffs and said Stewart, in said month of April, 1872, engaged and employed as their agents a certain firm of real estate brokers, then doing business as partners, in said city of Washington under the firm name and style of Kilbourn and Latta and composed of the defendants Kilbourn and Olmstead and one James M. Latta, and it was then and there agreed between the said firm," &c. Now, I wish to ask you whether or not the firm of Kilbourn and Latta was engaged and employed as the agents of Sunderland, Hillyer, and Stewart, or of either of these persons, as the agents of Sunderland, Hillyer, or Stewart, or either of them, for the purpose of purchasing of property in the city of Washington?

A. We represented them just the same as we did all our other customers. They would purchase property through the facil-
760 ities that we presented in our office. There was never any bargain nor agreement in regard to our acting as their agents nor any compensation to us as their agents. We had superior facilities, I suppose, over any other firm in the city of Washington in regard to the information and knowledge of real estate. They were in there a good deal and became familiar, through their conversation with us, as to our business about real estate. The first intimation that I had of their wanting to go in and buy real estate was when they talked with me about investing in property east of the Capitol. They thought there was a fine opportunity of investing. I had several talks with them. I said that the northwestern part of the city was the place to invest if a man wanted to invest in real estate. That probably continued, I do not know how long, but during that winter. That was in 1871. Mr. Hillyer bought two or three pieces, perhaps he and Mr. Stewart, in the northwest part of the city, and we sold them considerable property. I think all the property, with one or two exceptions, that they purchased
761 was done through our office.

8 Q. They say in this bill that they employed you as their agents to make purchases. I want to know whether that is true or not.

A. No, sir; we never made a purchase of any piece of property that the price and terms and everything were not first understood and agreed to by themselves. They fixed the price to every piece of property we ever sold to them—that is to say, they examined it and when they agreed to take it they authorized us to have the transaction put in shape, the same as any customers we transacted business for who came along to invest in property. I do not know of any difference.

9 Q. Have you heard the averments in the bill and amended bill of Sunderland & Hillyer and of Sunderland in this case? If you have, what do you say as to the truth of these averments?

A. There are a good many there that I do not know anything

about. It is a long bill. There are some of them I do know
762 about. I know about some transactions specially that I conducted. I had my talk and conversation with the gentlemen about them. A majority of the purchases that they made was when I was abroad.

10 Q. You are going a little beyond my examination. The first thing I want to get at is whether or not, as they aver in the bill, they employed you and you became their agents to make purchases, or whether, on the contrary, the purchases that were made by them were purchases made on their own account through your office, you being real estate brokers.

A. Yes; I understand it now. We were not employed as their agents to purchase for them originally. We called their attention to property, showed them property, and when the price was fixed and the terms then they authorized us to have these negotiations closed up. They paid us no compensation to act as their agents; we were not their agents in the purchase of the property, but after they purchased the property we were their agents for several years.

763 11 Q. Then you were not their agents?

A. No, sir.

12 Q. They say in this bill that for the purpose of making the purchases that they proposed to make there was an agreement entered into between them and the firm of Kilbourn & Latta, as follows: "That the plaintiffs and said Stewart should entrust unto said firm, as their agents aforesaid, the negotiations for and the purchase of such real estate in the said quarter of the said city as the plaintiffs and the said Stewart might elect to acquire; that they should furnish unto the said firm, when by the same thereunto required, such sums of money as might be requisite for the acquisition of the property, and that the plaintiffs and the said Stewart should pay unto the said firm upon the purchases to be made by said firm on their account, a reasonable compensation by way of commission, when and in case the said firm should make no charge by way of commission against the vendors of the property, but in case any such charge should be made by the said
764 firm against the vendors that then the plaintiffs and the said Stewart should pay unto the said firm no commission whatever." Now, I wish you to state whether you ever made any agreement with these plaintiffs and Stewart or with either of them of the character that is thus set out in this bill?

A. I do not know, for I did not know what purchases they intended to make. I only knew, from time to time when they made purchases, how much they would invest; therefore we had no agreement according to that statement, to my knowledge.

13 Q. You will observe that they aver that you agreed with them to be their agents to make purchases of property for them; that they were to furnish the money to make purchases with; that they were to pay you a reasonable compensation by way of commission, if you could not get a commission from the vendors of the property, but if you could get a commission from the vendors then

you were to charge them nothing. Did you ever make any such agreement as that?

765 A. I know nothing of any such arrangement as that.

14 Q. State whether you ever made any such agreement as that.

A. I never did.

15 Q. Did you ever hear of any such agreement as that until you saw it in this bill?

A. I do not know anything about any agreement at all of any kind. There was no agreement as to what they should pay. We went on and transacted the business for them.

16 Q. Could there have been any such agreement without your having some knowledge of it?

A. I suppose not. I should have known it.

17 Q. Now, they proceed further to say that "the said firm, in consideration of so being entrusted with the purchase of such real estate and of the commissions which it might derive from such purchase, should ascertain and point out unto the plaintiffs and the said Stewart such lots and parcels of land in the said section of the said city as in the judgment of the said firm might be most advantageously acquired by the plaintiffs and the said Stewart." Now

766 I wish to know whether or not there was any agreement on the part of Kilbourn & Latta and these complainants and Stewart or either of them that, in consideration of being entrusted with the purchase of real estate for complainants or Stewart or either of them and in consideration of the commissions which you might desire from such purchases, Kilbourn and Latta agreed to ascertain and point out to plaintiffs such lots and parcels of land as might be most advantageously acquired. Was there ever any agreement of that sort?

A. That is ridiculous on the face of it. There was no such agreement as that; never was any such ever thought of. We kept an office there to transact business. It was not necessary to say that we would charge commissions, for that was our business.

18 Q. Did you ever make any such contract with them?

A. No, sir.

19 Q. Then they say further that the firm of Kilbourn & Latta agreed that they would "advise and counsel to the best of

767 its judgment, knowledge, and experience, the plaintiffs and the said Stewart in respect of the purchase of any particular parcel of land within the said section which they on their own motion might suggest to the said firm desirable to be purchased on their account." Did you ever make any agreement that you would advise and counsel?

A. No, sir; nothing of that kind was ever suggested, to my knowledge. If there had been I would have known it. I want to say that I know nothing of any agreement of that kind. It was not necessary to ask our judgment about property, as people did that every day. We would give it to them without any agreement or contract, and we would not get commissions out of them for such advise.

20 Q. They aver that there was such an agreement between you

and them. I want to know whether you ever heard of any such agreement or have any knowledge of such an agreement?

A. I have never heard of any such agreement as that which is stated in this bill.

768 21 Q. They further aver that it was agreed between you that the firm of Kilbourn & Latta should negotiate for the purchase of any real property to be acquired on account of the plaintiffs and the said Stewart, at the lowest possible rate at which it could "be obtained from the owner, and after ascertaining the price at which any such property might be obtained from the owner, should fairly and to the best of the knowledge and ability of the said firm inform the plaintiffs and the said Stewart whether the said price was such as to render their acquisition of the property desirable, and recommend to them whether they should purchase the property or not." Did you ever enter into a stipulation of that kind with these gentlemen?

A. There never was a stipulation of that kind at all. In the business we transacted we exercised our best judgment; we showed the property, they agreed upon the price, and it was carried out that way; but as to any agreement, stipulation, condition precedent, or anything of that kind, I never heard of any.

769 22 Q. Let me go a little farther. They further aver that it was agreed that when the plaintiffs and the said Stewart "consented to such purchases the same should be made on their account by the said firm; and that upon receiving, at its request, from the purchase-s the cash required in the first instance, and also the amount of deferred payments, as the same might become payable, the said firm should make due settlement with the venders or other person entitled to payment." Was there any agreement of that sort?

A. That was the way the business was conducted, but there was no such agreeement.

23 Q. I wish to know whether there was, at any time before these parties began making purchases, an agreement entered into between the firm of Kilbourn & Latta and these complainants and Stewart or either of them having relation to the purchase of property which they were to embark in as a business, after such pretenced agreement was made? I want to know whether the parties ever

770 came together and agreed as to purchases that Sunderland and Hillyer or Stewart or either of them were then after to make by which you fixed the terms upon which Kilbourn & Latta were to act in making future purchases?

A. I do not think there was. To my knowledge, no conversation as to the magnitude of what they were going to do or anything preliminary thereto ever took place. I know there was no agreement, because we only knew as to what they proposed to invest in each transaction as they proceeded; but to my knowledge there was no agreement or course laid out between them and us as to their general investments, for I certainly did not know to what extent they were going. We had full faith in that section of the city, and we

talked real estate up to them, as we did to everybody else, and believed it was a good investment.

24 Q. But they say that they were going to embark in the business of buying real estate in the future, and that preliminary to that they made an agreement with you by which the terms were fixed upon which you should act as their agents in making those purchases that they might thereafter make. Was there ever any such agreement?

771

A. No; it is all right, except there was no agreement, conditions, negotiations, &c. We did that thing. It is all right except any precedent or preliminary agreement or any course to be adopted. There were several pieces of property they spoke for themselves and decided for themselves to purchase.

25 Q. There was no agreement about it?

A. No occasion for an agreement.

26 Q. Each transaction stood upon its own basis and occurred as from time to time they wanted to make purchases? Whatever was done was so done?

A. Precisely. I do not think we ever charged them any commission in making those purchases.

27 Q. Then, for ought you know, state whether or not any one purchase might be the last they might make.

A. It was, as far as I knew.

28 Q. There was no definite arrangement between you and them in reference to the extent of the purchases or anything about them, but each purchase stood upon its own independent and seperate footing?

772

A. Yes, sir; I did not know when they would stop nor how far they would go only as from day to day they would enquire. They had their headquarters there.

29 Q. What was your business?

A. Buying and selling real estate for our own account, selling as agents on commission or as brokers, and some property independently of real estate; making loans, negotiating loans, &c.

30 Q. Did you have on your books real estate for sale?

A. Yes, sir.

31 Q. How large were your dealings in that direction?

A. I think we had probably larger facilities and larger lots of property and were more familiar with Washington city property than all other real estate agents in the city put together. We considered our office a kind of real estate headquarters.

32 Q. And persons were coming to you all the time with reference to selling and buying?

A. Yes, sir.

33 Q. Did these parties come to you in any other way, or did you have any other relations with them than you had with other gentlemen who had property to buy or sell?

773

A. Just precisely the same as other customers who came in there. The only difference was the magnidude of their business; they bought more than other customers did.

34 Q. At the time that these gentlemen were making their purchases where was your office?

A. Corner 15th and G Sts.

35 Q. How long had you known them before they commenced making purchases?

A. I had know- Mr. Stewart a few years, I think.

36 Q. He was in the U. S. Senate?

A. Yes, sir; and Mr. Hillyer, I think, about a year, and Mr. Sunderland I never met but once, I think—once or twice—before they went into this business.

(Adjourned to half past three o'clock to-morrow.)

WM. T. S. CURTIS, *Examiner.*

774 WASHINGTON, D. C., *Oct.* 13, 1882.

Met, pursuant to adjournment, at the hours specified in said adjournment.

Appearance: Mr. Hillyer, for complainants; Mr. Wilson and Mr. Totten, for defendants.

HALLET KILBOURN'- examination resumed:

By Mr. TOTTEN:

37 Q. What was the condition of the real estate marked in 1872, in this city?

A. It was very buoyant—active transactions.

38 Q. Was the firm of Kilbourn & Latta conducting a large or small business?

A. Large business.

39 Q. To what extent?

A. I think a larger business than all the other real estate firms combined.

40 Q. What was the average amount of the sales each year for 1872 & 1873?

A. I cannot remember without referring to the books; very large, though.

41 Q. Did the firm of Kilbourn & Latta have a small or
775 large list of property for sale?

—. ——.

42 Q. What was the custom of the firm touching the doing of business in selling property. For instance, suppose a man should have gone to the firm and said that he had a piece to sell, what kind of entry did you make on any book, if any entry at all?

A. We had a book in which a description of the property for sale was entered, and in a great many instances the owners of the property, or whoever represented it, gave us authority to sell; and in a great many other instances the property was entered by us with the name of the owner and price. He stated the general terms and conditions, &c.

43 Q. Did you publish a real estate paper?

A. We did for some time, but whether we did in 1872 or not I cannot now remember. I can tell by refer-ing to the books.

44 Q. When a man put his property in your hands, or when he permitted you to advertise or to enter it upon your books for
776 sale, who paid you commissions in the event of your making the sale?

A. The owner of the property.

45 Q. The seller?

A. Yes, sir; the seller.

46 Q. Your office at that time was on the corner of 15th and G streets, opposite the Riggs House?

A. Yes, sir.

47 Q. How many rooms did you have there?

A. Two.

48 Q. Who was the book-keeper of your concern and the general man in the way of keeping books and keeping accounts?

A. John Bull.

49 Q. He was your clerk and employed at a salary, was he?

A. Yes, sir.

50 Q. Was any member of the firm charged with that branch of the business particularly?

A. What do you mean?

51 Q. Did you or Latta or Olmstead look after the condition of the books?

A. The keeping of the books was all entrusted to Mr. John Bull.

52 Q. Who supervised John Bull or watched him.

777 A. I suppose everybody had access to the books—all the members of the firm.

53 Q. Mr. Wilson has asked you whether or not there was an agreement between you and this firm of Sunderland, Hillyer & Co. to some extent. It has been stated in the testimony that a bargain was made between Sunderland, Hillyer & Co., on the one side, and Kilbourn & Latta, on the other, as to the terms upon which Kilbourn & Latta should do business for them, and that that bargain was made in the front office, on the corner of 15th and G streets, some time in April, 1872, possibly in May, and that the bargain was made between some of those gentlemen and Mr. Latta principally, although the talk was with Latta and yourself. I want to know from you whether there ever was any bargain made between any one of the members of that firm and any one or more of the members of your firm in the front office as to the terms upon which you should do business for them in the future, in April or any time about April?

A. There was none, to my knowledge.

54 Q. What relation, if any, did Sunderland, Hillyer & Co.
778 occupy as to your firm differently from the relations of any other speculation in real estate?

A. No different relations whatever, only as to the magnitude of the business; that is all.

55 Q. Was the magnitude of the business any greater than that of other people?

A. I think it was.

56 Q. It was greater?

A. Yes, sir; greater than any other one set of operators—that is, they were the largest dealers.

57 Q. Did you in any instance charge a buyer commission *and* for selling him real estate in this city?

A. Now, that I cannot answer. There have been instances, perhaps, in our extensive business where the buyer has paid us instead of the seller. There may have been exceptions.

58 Q. Was that an exception to the rule?

A. Entirely so.

59 Q. The custom is that the seller pays commissions to the real estate agents?

A. Yes, sir.

60 Q. What is a real estate agent in the sense in which that term was used in 1872, 1873, 1874, 1875, 1876, and 1877?

779 A. I suppose that it is a man who acquires information about property—real estate—and gets it for sale & buys and sells property.

61 Q. It is charged in this bill that there was an understanding between your firm and Sunderland, Hillyer & Co. that you should endeavor to and exert yourselves to extort commissions from the sellers of property to Sunderland and Hillyer; and in the event of your failing to do that, then Sunderland and Hillyer were to secretly pay you commissions for such property as should be bought by you for them. What do you say about the truth or falsity of that statement?

A. I do not know anything about any such agreement.

62 Q. Was there any such agreement, or was there not?

A. There was no such agreement, to my knowledge.

63 Q. If there had been such an agreement as that would you have known it?

A. Undoubtedly.

64 Q. What means had you of knowing what agreements
780 other members of the firm made touching the buying or selling of real estate?

A. I do not know that I understand that exactly.

65 Q. Was it possible for any member of the firm to make a general bargain with anybody else outside of the firm for the firm without your knowing about it?

A. I suppose that I knew all of the transactions of the firm.

66 Q. If that kind of bargain had been made by any other member of the firm—Latta or Olmstead—would you have known it or would you not have known it?

A. I think I would have known it.

67 Q. What was the custom as to memoranda of agreement of any character touching the selling and buying of property?

A. We had some authorities or printed slips—a form that we had—book on which parties leaving property for sale subscribed to that authority, stating the terms, &c. In many instances, though, that was not done.

68 Q. Do you remember having any conversations with either Sunderland, Hillyer, or Stewart, in your office, touching the
781 terms upon which future transactions should be conducted?

A. Not with regard to any future transactions. I had a great many daily conversations with Sunderland and Hillyer about real estate. I do not think I ever had much talk with Mr. Stewart, but many times a week, I presume, the question of real estate, as to operations in real estate, was talked over by myself and Sunderland and Hillyer. I remember of no conversations with reference to any agreements between Sunderland and Hillyer differing from the way in which we transacted business for other people.

69 Q. Was it your habit to be about the office constantly?

A. I was there every day—in and out.

70 Q. Had you any other place of business?

A. No, sir. It is proper for me to say, perhaps, right here that Mr. Latta gave probably more attention to the details of the business than I did myself.

71 Q. How is it about Olmstead?

A. Olmstead also, probably, as to details.

72 Q. What was your notion about the attitude occupied by Sunderland, Hillyer & Co. to this firm of Kilbourn & Latta
782 when the transactions mentioned in this bill were going on?

A. These relations were those of large customers seeking the facilities of our extensive business for investment in real estate. We had customers, a large number, right along. The only difference between Sunderland and Hillyer and these other customers was, as I have said before, the magnitude of their business. They were the largest customers.

73 Q. Did you ever hear any conversation tending toward any special bargain with Sunderland, Hillyer & Co. and Kilbourn & Latta between any one of those gentlemen and Latta or Olmstead with regard to the purchase of property? I allude to the period of time between the first of April and the first of May or middle of May, when they began to purchase.

A. I did not.

74 Q. Do you know anything about any special agreement differing with the agreements which prevailed as to other customers of the firm?

A. I do not.

783 75 Q. If there had been any special agreement would you have known it?

A. I think I should have known it.

76 Q. Did you ever hear of any such special bargain with them until you saw this bill?

A. I did not.

77 Q. Did you ever know of such a thing as a real estate dealer occupying the position which the firm of Kilbourn & Latta did, doing the character of business that they did, making a bargain with the buyer of real estate with the understanding that they should tax the seller, or, in other words, become agents of the sellers,

if they could, to get the fees out of them, and failing in that get the fees out of the buyers?

A. No, sir.

78 Q. Or, in other words, being the agent of both parties at the same time, did you ever hear of such a thing as that before this bill was filed?

A. No, sir; as I stated a little while ago, I think there may have been instances in our business where the buyer may have paid us, the seller refusing, a mutual understanding of that kind
784 being had; but I cannot recollect any special instance now.

79 Q. Do you know anything about the history of the square known as 115, in this city, connected with your purchase of it and your sale of it?

A. I know that we were negotiating for the purchase of that property for a considerable period of time before we purchased it.

80 Q. Now, about how long—many months or many years?

A. The length of time I cannot remember, but I think it was over a year.

81 Q. The property was owned by a charitable association which has been mentioned in the case—"The Institution for the Education of the Colored Youth." Was it not represented by George E. Baker and Mr. Bowen and somebody else?

A. Yes, sir.

82 Q. We have taken the testimony of those gentlemen on that subject, so that you need not be troubled about that. You think the negotiations were going on a year?

A. A year and possibly more.

785 83 Q. Before Sunderland, Hillyer & Co. began to talk about or consider the property—of buying it—had the firm of Kilbourn & Latta secured it?

A. I think that we commenced negotiating for that property before I knew Sunderland and Hillyer.

84 Q. Had you kept up those negotiations?

A. Kept them up until this purchase was consummated.

85 Q. What was the first offer you made them for it?

A. I think $25,000.00; that is my recollection.

86 Q. Did you make more than one offer between the one which was accepted and the first offer? If so, what was the amount?

A. The amount I cannot remember. My recollection is that we made an offer of $25,000.00, but we may have made other offers along.

87 Q. Did you ever have any talk with Mr. Bowen and Mr. Baker?

A. I never did myself.

88 Q. With whom did you talk?

A. I think a gentleman by the name of Blanchard, who came
786 up to the office, and negotiations were carried on by Mr. Olmstead and Mr. Latta, on our side, and, on the other side, the trustees of the property—a lady and Mr. Bowen and Mr. Baker.

89 Q. Do you mean Mrs. Johnson? Did you make any offer in which Seneca mortgage bonds cut a figure? I mean your firm.

A. I cannot remember.

90 Q. Were you present at an interview on this subject at Mrs. Johnson's house, on 12th St.?

A. I never was.

91 Q. The property was bought by the firm of Kilbourn & Latta for $40,000.00?

A. It was.

92 Q. How long a time elapsed before you got your title straight?

A. That must have been weeks, if not months.

93 Q. Who attended to the difficulties about the title?

A. Mr. Latta and Mr. Olmstead. I think Mr. Olmstead.

94 Q. Did you personally have anything to do with it?

A. I did not.

95 Q. Then you do not know much about it?

A. I do not.

96 Q. The conveyance was finally made to Mr. Latta, was it?

A. Yes, sir.

787 97 Q. Now, will you state, if you remember, the inception of the conversation or negotiations between your firm and Sunderland, Hillyer & Co. about this square, touching this purchase by them? Where did it happen and when?

A. I cannot say where. I presume we called their attention to that as we did to other property, but whether it was at the property or in the office I cannot tell.

98 Q. Did you do it or did somebody else?

A. I had a good deal of conversation with Mr. Hillyer and Mr. Sunderland; more, I think, with Mr. Hillyer.

99 Q. What was the conversation?

A. Representing that I considered it a good piece of property—as good squares as there were in that section of the city.

100 Q. Did Mr. Hillyer know that the firm had bought the property and had been negotiating for it all these months?

A. He knew that the firm had been negotiating for the property, because there could not be anything definite until these negotiations were terminated.

101 Q. How do you know that he knew about the negotiations?

788 A. I told him myself that we were negotiating about the property.

102 Q. The property is located in the northwestern part of the city, between Connecticut avenue and 19th street?

A. No; between 19th street and New Hampshire avenue.

103 Q. Yes. Did you have any talk with Sunderland about it?

A. Both Sunderland and Hillyer.

104 Q. How often did Sunderland and Hillyer come to your office during April, May, and June, in 1872?

A. I went away in June, but I suppose they were there every day.

105 Q. Did they frequent the place; come in and go out more than once a day?

A. Oh, yes; sort of headquarters. They would be in there very often several times a day.

106 Q. Did the gentlemen seem to be devoting their minds to the purchase of real estate?

A. They were.

107 Q. What other business were they engaged in, if any, to your knowledge?

A. I do not know whether Col. Hillyer had a law office at that time or not. I do not remember. He may have had. I do not remember whether at that time he was with General Jeffries or not.

789 108 Q. Are you able to state positively that Hillyer or either Hillyer, Sunderland, or Stewart knew at the time they began these negotiations for square 115 that Kilbourn & Latta owned it or had secured the contract?

A. I do not know that I ever had any conversation with Mr. Stewart about it. Sunderland and Hillyer knew that we were negotiating for that property. They asked me about it and I had various conversations, I think, with Col. Hillyer and, perhaps, Sunderland, pending the negotiations that we were making, and when they were perfected I stated, I think, myself, to Col. Hillyer the price at which he could have that square.

109 Q. What did he say about it?

A. He agreed to take it. I do not know whether he did that day when I first told him, but after some talk he agreed to take it. Possibly he and Sunderland were together. I do not remember about that.

110 Q. This bill, in the fifth paragraph, states that your firm informed the complainants about the 25th of May, 1872, that your firm had been in negotiations for the purpose of securing square 115 from the owner thereof, and represented to the plaintiffs and the

790 said Stewart that the sum of $65,000.00 was the lowest price at which the said square could be obtained from the owner thereof, and advised the plaintiffs and the said Stewart that the purchase of the said square at such price would be a desirable and advantageous one. What do you say to that; is that true or false?

A. I did not advise them anything about it.

111 Q. What do you say about the representations as to the sum of $65,000 being the lowest price at which it could be obtained from the owner thereof?

A. I did not state to them anything of the kind. I think I was the one who had the conversation with Col. Hillyer, and I think I told them they could have it for $65,000.00.

112 Q. Did Col. Hillyer know that the firm ow-ed the property, controlled it, and that was the price the firm demanded on the price the charitable association demanded?

A. I do not know whether he knew who owned it at the time. I told him it could be had for $65,000.00. I told him at that time that it was perfected so that he could get it at $65,000.00.

113 Q. The price of $65,000.00?

A. Yes, sir.

114 Q. Was there anything said by you or by any member of

the firm in your presence or hearing that the charitable association demanded $65,000.00?

791 A. There was not.

115 Q. What was said between you and Hillyer about the charitable association, if anything, and their terms?

A. I do not know that anything was said about the charitable institution to the firm of Sunderland & Hillyer. Sunderland & Hillyer knew the original parties whom we were negotiating with, if it was this charitable institution or whatever institution it was.

116 Q. Did you ever tell Hillyer or either of those gentlemen who owned the property before you got it?

A. They knew, as everybody else did, who were the original owners of it.

117 Q. Did they know at the time they bought it and before you got it?

A. Certainly they did.

118 Q. Who told them?

A. It was talked of in the office; everybody knew it.

119 Q. Did you tell Mr. Hillyer?

A. Yes, sir; they knew who the original owners were.

120 Q. And he knew about the negotiations between your firm and the original owners—the charitable association?

A. Yes, sir.

792 121 Q. Did you tell Mr. Hillyer how long you had been negotiating?

A. Yes, sir.

121½ Q. Are you able to state now that those negotiations had been running back as far as 1868 with this charitable association, represented by Baker and Bowen?

A. I remember that it was several years; whether it was in 1868 or 1869 or along there. We commenced negotiating for that when we were down on the corner of 7th and F streets.

122 Q. Do you remember anything about an investigation of property up along Massachusetts avenue in reference to Cooke & Co. and Huntington and those men and Seneca bonds?

A. Yes, sir.

123 Q. And you remember that that investigation continued for a long time touching the desirability of property up there?

A. Yes, sir.

124 Q. What was said about this square 115?

A. Several years before we moved up here, in 1868, 1869, or 1867, somewhere along there, at the suggestion of Mr. Cooke we made inquiries of the property in the northwest part of the city.

793 I think Latta spent days, if not weeks, on it and hunted up the price and the owners in that section of the city. That was two or three years before the Board of Public Works was started here. It was while it was a city government, and it was through that movement that we became so familiar with the ownership and price of property in the northwestern section of the city.

125 Q. Do you remember applying to Mr. Morgan for a tax-list of

property-holders along Massachusetts avenue at that time—1867 or 1868?

A. Yes, sir.

126 Q. You got a list from him, did you not?

A. Yes, sir.

127 Q. Well, then, after that or through that you found out that this property belonged to this charitable association?

A. Yes, sir.

128 Q. Did you have any conversation with anybody in regard to any plan by which you could dispose of Seneca bonds which you had or could control?

A. I cannot remember distinctly as to that. That is a great many years ago if it was in 1868, and I presume that was the
794 year; but I know Mr. Cooke was desirous of going into a grand real estate operation in that part of the city, and it was through his suggestion that we started in. He talked then of investing, I think, $150,000.00 in that section of the city.

129 Q. It is pretended in this bill that you were sent as the agent of Sunderland, Hillyer & Co. to buy this property, square 115, from the owners for them. What do you say to that? Is it true or false?

A. It is not so.

130 Q. Who first attracted the attention of Hillyer and Sunderland or either of them to this square?

A. I do not know whether I did or not. I know I called their attention to it, but whether I was the first one or not I do not know. I know I had conversations with them about it.

131 Q. Was there anything said about your going to the owners and buying the property for them from the owners?

A. No, sir.

132 Q. Let me call your attention to this clause in the bill:

"That said firm fraudulently and for the purpose of cheat-
795 ing the plaintiffs and the said Stewart charged and induced them to pay to the said firm as the purchase price of said property twenty-five thousand dollars $25,000.00 more than was paid or was necessary to be paid by the said firm to the vendor of the said square, which sum of $25,000.00 the said firm appropriated at the same time to their own use and have since retained."

What do you say about that?

A. I say that is not so. I did not sell the square to Sunderland and Hillyer until we owned it ourselves.

133 Q. Did you begin any negotiations with them until you ow-ed it?

A. No, sir; no negotiation except to tell the price that they could have it at when we secured it.

134 Q. Was your firm ever the agent of Sunderland, Hillyer & Co. in relation to this square until after the purchases had been closed by them?

A. We were not.

135 Q. What do you know about square 156?

A. I know that was purchased by the Real Estate Association.

136 Q. From whom?
796 A. Thomas Young.
137 Q. For how much?
A. I think about $65,000.00.
138 Q. About what date did you buy it from Thomas Young?
A. I think it was in the fall of 1871.
139 Q. Was there a deed made by Thomas Young to anybody for the association?
A. Made to me as trustee.
140 Q. Do you know where the deed is?
A. I do not.
141 Q. Was it recorded about that time?
A. I do not know when it was recorded, but I suppose so.
142 Q. That square was subsequently sold to Sunderland, Hillyer & Co.?
A. It was.
143 Q. By whom?
A. The firm of Kilbourn & Latta.
144 Q. Who did the business?
A. I think I consum-ated that sale myself.
145 Q. To whom did you do the talking?
A. To Sunderland and Hillyer.
146 Q. Not with Stewart?
A. I do not remember having any conversation with Stewart.
797 147 Q. Did Sunderland and Hillyer know it belonged to the Real Estate Association?
A. They did.
148 Q. What did they know, as far as you know, about this Real Estate Association at that time?
A. They knew that I was representing as trustee several parties, called the Real Estate Association, that was buying property, but they knew that that property belonged to the association; they knew what that property cost the association; they knew what profit the association made when they bought it—all about it.
149 Q. How do you know that they were aware of the fact that the Real Estate Association owned the property?
A. Because I told them.
150 Q. Did you tell Hillyer?
A. Yes, sir.
151 Q. Did you tell Sunderland?
A. Yes, sir.
152 Q. And both together?
A. Yes, sir.
153 Q. How long before they bought the property did you tell them that?
A. I think they knew it at the time they commenced buying the property themselves. They knew what property the Real
798 Estate Association owned lying there on the Massachusetts-avenue front.
154 Q. Did you ever tell Hillyer how much you paid for it?
A. Yes, sir.

155 Q. Did you ever tell Sunderland?

A. Yes, sir; they knew just as much about it as I did.

156 Q. When did they first get the notion of buying that square—about what date?

A. I cannot tell about that.

157 Q. Did they talk with you much about it prior to the conclusion of the bargain?

A. Yes, sir. I had most of the conversation, but Olmstead and Latta may have had some conversation.

158 Q. They bought the property for a little over $90,000.00?

A. Yes, sir. Of course they knew the difference if they knew the price you paid for it; they knew all about it.

159 Q. Did they go and look at this square 156 before they bought it?

A. They had seen it and all the property along there. I had been around there with them.

160 Q. Did they go and look at square 115?

A. Oh, yes.

799 161 Q. How did you know that?

A. I had been by there with them myself. They had often rode around the northwestern part of the city.

162 Q. In what shape did you present the proposition to these men to buy square 115, and as to the price? I ask you that in connection with this idea: Whether they made up their own minds or whether they did not, but took the judgment of the firm of Kilbourn & Latta?

A. I showed them that the same as I did other property in the northwestern part of the city. There was no difference between that and other property.

163 Q. Were these gentlemen in the habit of making up their own minds as to the value of property?

A. I certainly think they were.

164 Q. They assumed to know as much about the value of real estate as other persons, did they not?

A. I think they did.

165 Q. What is your impression about this question: Did they rely upon the opinion of the firm of Kilbourn and Latta or upon their own opinion?

800 A. There was not a piece of property purchased by them until they decided whether it was satisfactory to them. I think we showed them a good deal of property they did not buy. The prices were not satisfactory, or for some reason.

166 Q. How many pieces—a half dozen or a dozen?

A. Yes. I cannot remember. We showed them almost all the property we could find around vacant in that section, and they decided for themselves.

167 Q. Do you know personally anything about square 115 having been sought for by Mr. E. C. Ingersoll?

A. I only know that through what Mr. Latta told me.

168 Q. You had no talk with them on that subject?

A. Not until after the thing was sold.

169 Q. Do you know whether Ingersoll offered $70,000.00 or not?

A. The only conversation I had with Mr. Ingersoll was after it was sold, and he said: "Why did you not let me know about that? I would have done better—given more." There was no price
801 mentioned, and I did not pay any attention to it. I think I made the reply, if he wanted to buy property he must come to headquarters—get around.

170 Q. Did Latta say anything about it at the time Ingersoll made the offer?

A. I know that Mr. Latta told me that he could have gotten $5,000 more for that property if we had not sold it to Sunderland and Hillyer, or that he would have given $5,000 more for it—something of that kind. I considered, as the offer was made to these gentlemen and they agreed to take it, that settled it.

171 Q. Was this information given to you by Mr. Latta at the time of the transaction?

A. Yes, sir. Along at that time Ingersoll was looking around, examining property, and I remember when he spoke to me about it I told him if he wanted to get bargains sometimes to come around in time.

172 Q. Mr. Eldredge has testified in this case about square
802 156, he being a member of the Real Estate Pool. He says he did not know how much profit the Real Estate Association had realized out of square 156. Can you state of your own knowledge what Mr. Eldredge knew about it or what he was told about it?

A. Yes, sir; he is like these gentlemen—has forgotten what he said. Mr. Eldredge knew all about it.

173 Q. Did he know from whom you bought the property?

A. Yes, sir.

174 Q. How do you know?

A. I told him.

175 Q. Did he know the price for which you bought it from Thomas Young?

A. Yes, sir; and he knew the price at which it was sold to Sunderland and Hillyer and knew the profit. I do not know whether he was here at the time or not or just before or after. He knew when the negotiations were going on and knew when they were consummated. It was often spoken of there in the office as evidence of how property was moving in that portion of the city.

803 176 Q. Now, about square 155. Do you know anything about that?

A. I do not.

177 Q. You do not know that that was a joint speculation between the firm and Eldredge?

A. I went to Europe; left the 3d or 4th of June.

178 Q. Did you know anything about the settlement of Eldridge with the Real Estate Association?

A. I did not.

179 Q. Do you know anything about the purchase of property by Sunderland and Hillyer from Mr. Berret, square 195?

A. I was here when they purchased that property. I do not re-

member who the owners were. I think Mr. Hillyer and Col. Berret negotiated for the property.

180 Q. Can you state when the last purchase was made by Sunderland and Hillyer of real estate through your firm?

A. I cannot myself; I think it was while I was away.

181 Q. It was about the 21st of June, was it not?

A. I was away.

182 Q. When did you come back?

804 A. I got here—I either returned the last of August or first of September.

183 Q. When, if ever, was any real estate put into the hands of Kilbourn and Latta for sale by Sunderland & Hillyer or Stewart or either of them?

A. That means a price put on it to sell?

184 Q. Yes, sir.

A. Well, I do not know; but it was several years after they bought it before they put any price on it.

185 Q. The property was left in the care of the firm of Kilbourn and Latta from the time it was purchased or from the time you came back. When did you first find out that the property was in your care?

A. It was when I returned. Before I went away, I think, the title was put in the hands of our firm—all the property that was bought before I went away—and when I came back I ascertained that the remainder of the property they had purchased was put in our hand-.

186 Q. The property was in the name of Mr. Latta, as trustee, generally?

A. Yes, sir.

805 187 Q. How did that happen to be done, do you remember?

A. My recollection is that these parties in interest were separating, going to Europe and to the Pacific coast, and uncertain of what time they would be absent, and therefore thought it would be better to place it in the hands of a trustee.

188 Q. At whose suggestion was that done?

A. It was done at the suggestion of Sunderland and Hillyer.

189 Q. It was done with their consent, at all events?

A. Yes, sir; I do not know who suggested it, but I suppose they did, of course. I was holding property for the Real Estate Association, as trustee, in order to facilitate the transaction of business attending to it, and that, no doubt, suggested the trustee business to them.

190 Q. It is a fact, I believe, conceded in the case that these deeds were not put upon record, through common consent, until some time in October—about October 2d, 1872. Do you remember why that was done, what the point was about that?

806 A. Why they were kept for some time and were not put on record as soon as the transactions were closed was because they did not want the public to know about the extent of the transaction until they should finish making purchases. If it was put upon the records and published in the papers it might have interfered with their

getting other property at such prices as they wanted.

191 Q. Do you know whether these deeds were retained and kept off the records with their advice or not?

A. Yes, sir.

192 Q. Do you think they advised it? Tell us what the bargain was, or what the suggestion was, or what the conversation was on the subject.

A. I cannot remember any distinct conversation, but I know that was the reason for keeping it off until they got through making their purchases.

193 Q. Do you know whether they concurred in that?

A. Yes, sir.

194 Q. Do you know whether they desired that to be done?

A. Yes, sir.

807 195 Q. Now, these deeds were made, probably, at the time of the various transactions. What was done with these deeds? Where were they kept?

A. They were kept in the safe.

196 Q. What safe?

A. The safe of the firm.

197 Q. Did Messrs. Sunderland and Hillyer or Mr. Stewart have a chance to see those deeds, and did they see them?

A. I presume they did; they certainly had a chance to see them at any time, and all papers connected with their business.

198 Q. Do you know of their looking at the papers?

A. I cannot state.

199 Q. Did you ever see them looking at them?

A. That I cannot say. They may have looked at them forty times, for all I know.

200 Q. Did your line of duties in the firm lead you to show them the deeds?

A. Oh, yes, sir.

201 Q. Do you know whether you ever did or not?

A. I do not know whether I ever did or not; I think Mr. Bull had all the papers labeled and put in good shape—put away.

808 202 Q. Do you know whether Mr. Bull had any instructions to show these gentlemen the papers?

A. He certainly had no instructions not to show them, and he certainly showed them if they ever asked for any of them.

203 Q. Can you state about when your services—I mean the services of your firm—began as to the care of this property of the complainants?

A. I suppose immediately after it was purchased.

204 Q. What was the amount of the personal notes given by Mr. Latta, either individually or marked as trustee, for the benefit of Sunderland & Hillyer and Co.?

A. That it would be impossible for me to state without referring to the books.

205 Q. Was it a large or small sum?

A. I think it amounted to—it was a large sum.

206 Q. Was it over 100,000?

A. I think it was, considerably.

809 207 Q. Do you know whether there was any trouble with the firm or about the firm touching the non-payment of interest on these *rates* at maturity which Latta had given?

A. What do you mean?

208 Q. I mean was the firm annoyed by it?

A. Yes, sir; I think the firm borrowed money on the property, and my recollection is that the firm borrowed on their own account.

209 Q. Was the credit of the firm injured by the non-payment of interest on any of the *rates?*

A. I think so.

210 Q. What do you know about it?

A. I know that growing out of these transactions, the deferred payments, the firm did get embarrassed in regard to raising money. Their credit was affected, of course.

211 Q. What other services, in addition to attending to these deferred payments, the payment of rates, did your firm render in reference to this property?

A. As to taxes, rents, fighting excessive taxes, and keeping up the faith in the final outcome of the property and using all other
810 influences to keep up the values of property in that section of the city.

212 Q. Did Mr. Sunderland or Mr. Hillyer pay any attention to this property from, say, the first of July, 1872, until the dissolution of the firm, December 31, 1862?

A. I do not think they gave any personal attention to it.

213 Q. Where were they?

A. I think in Europe and on the Pacific coast.

214 Q. Was there a tax levied by the local Legislature here known as the sewer tax?

A. I think there was.

215 Q. What was the amount of it? What was the percentage on the valuation of the property?

A. I cannot tell.

216 Q. Was it two or three per cent.?

A. I think it was two per cent.

217 Q. What did you have to do with that in the way of relieving this property from that assessment?

A. I knew we fought every tax inch by inch as if we owned the property ourselves.

811 218 Q. The sewer tax was discharged, or rather the property was relieved from it, by act of Congress, was it not?

A. I believe it was.

219 —. They issued those "yellow-back cards?"

A. Yes, sir.

220 Q. Those bonds were retired and the property relieved from it?

A. O, yes; I remember all about it.

221 Q. Tell all about it.

—. There are so many taxes that I cannot get it very clear. Yes, sir; that was considered by everybody here as an unjust and an outrageous tax. They fought for relief, and we used our power and influence and devoted a good deal of time to it.

222 Q. Personally what did you do? Did you have a good deal to do with having that tax repealed?

A. I cannot say what I accomplished. I worked very assiduously all the time. I probably had as much to do with it as any individual.

223 Q. This sewer tax was based upon the assessment ex-
812 isting at that time, was it not?

A. On the appraisement.

224 Q. I mean appraisement—valuation of the property.

A. I understood you to say assessment, I think it was. I have not thought about that matter, and it has been so long ago I cannot tell.

225 Q. What was the nature of the valuation on this property in the northeastern section of the city, where these purchases of Sunderland and Hillyer were made—was it high or low?

A. I think the appraisement was high. After these purchases were made the authorities appraised that property to a large advance over what it had been before. They put up the valuation on their tax book very much.

226 Q. Were either Sunderland or Hillyer present at work in the city on that subject—the subject of relief of the property from the sewer tax levied?

A. No, sir.

227 Q. Where were they?

A. In Europe or on the Pacific coast.

813 228 Q. What interest, so far as you know, did Sunderland and Hillyer take in the status of this property? Did they seem to be interested in it or leave it to the firm of Kilbourn and Latta exclusively?

A. Exclusively to the firm of Kilbourn and Latta.

229 Q. Did they seem to be as much bothered about it as were Kilbourn and Latta?

A. I think not.

230 Q. How many of these notes were suffered to run over maturity which Latta had made?

A. That would be impossible for me to tell without referring to the books.

231 Q. Was there a number of them?

A. I think there was, but I cannot state the number.

232 Q. Were any sales ever made for default? I mean any sales of property which was as security given for deferred payments.

A. I think not; I think there was one piece that they bought of Willard that was sold in which we protected it ourselves.
814 That was the only piece, I think.

233 Q. What do you know of the services rendered by Olmstead in the way of getting assessments reduced?

—. I know that he was constantly at work down at that office. He was there daily.

234 Q. For how long a period?

A. I do not know. He did not seem to get through with one tax before there was another.

235 Q. Who drove about the city looking after the property?

A. Olmstead did a great deal of that.

236 Q. Did you do any of that?

A. Not much.

237 Q. Did Mr. Sunderland or Mr. Hillyer or either or both of them write letters to you on this subject frequently?

A. They never did.

238 Q. What, in your judgment, was it worth per annum to take care of that property?

A. I think it was worth all that we charged them and more, too.

239 Q. Would you be willing to do that service again for a less sum?

815 A. No, sir; I think not. I think it was a very reasonable charge.

240 Q. I speak of the work you actually did in keeping down taxes and assessments and protecting the property from outrages by the District government, as well as the injury to the credit of the firm by failure to take up these notes at maturity and pay the interest when due.

A. I think, leaving the notes out of the question, the charge was very reasonable for what we did, independently of any effect upon our credit.

241 Q. How much, in your judgment, was it worth to the members of the firm of Kilbourn and Latta to sweat under the tightness of the market and the failure to meet these notes, separating that from the mere physical labor?

A. As I said just now, for the work of caring for the property, without any of these embarrassing circumstances, the price we charged was no more than reasonable.

816 242 Q. Putting that out of the question, how much was it worth to carry the load of this paper on your shoulders?

A. I do not think I can tell that.

(Adjournment until three o'clock to-morrow.)

WM. T. S. CURTIS, *Examiner.*

WASHINGTON, D. C., *October* 14, 1882.

Met pursuant to adjournment.

Present: Messrs. Hillyer and Ralston, for the plaintiffs, and Messrs. Totten and Wilson for the defendants.

HALLETT KILBOURN'S examination resumed.

By Col. TOTTEN:

243 Q. I think the last question I asked you was how much it was worth to assume the responsibility of these notes and the financial part of it outside of the actual care and management be-

817 stowed upon the real estate, considering in that connection the trouble the firm had in maintaining its own credit from these assaults and all that sort of thing.

A. I replied that, independently of any consideration of that

kind, carrying the notes or attending to the extensions, if any were necessary, that I considered our charge moderate for what we did.

244 Q. What was that worth—carrying these notes?

A. I do not know.

245 Q. What would you agree to do it for again?

A. I cannot say in regard to that. I do not remember how many there were that required attending to. I cannot say anything about that without reference to the books. I do not know that there were many that required attention. I do not remember anything about that. I am testifying that, in my judgment, independently of any question of taking care of the notes if they were behind in the payment at maturity, leaving that entirely out, our charges were only reasonable for the general care and management of the property.

818 246 Q. Now, some time in 1873, possibly in 1874, after Mr. Hillyer had returned from Europe, there was an interview between Hillyer and Latta, principally Latta, and you and Olmstead were present at least a part of the time; but the subject-matter of the compensation to be paid to the firm of Kilbourn and Latta for care and management was discussed. Be good enough to tell us what the conversation was, so far as you heard it, and how it came out in the first place.

A. The time I cannot tell, but I remember one day that Col. Hillyer brought the subject up with regard to the care and management of the property. Possibly it was in 1873, the time he returned from Europe. I cannot fix the date now in my mind, but I remember we went into the back room. Mr. Latta sat on one side of the desk and Col. Hillyer — the other. I was walking up and down. Mr. Olmstead was in there a very brief time. The position that Col. Hillyer took about the care and management of this property

819 was that the firm would be compensated for their trouble in the commissions that they would get from the sale of the property. Mr. Latta contended that that would be no compensation, for there was no price fixed upon the property so that they could sell it, and there was no sale for property at that time, and that would not be any compensation for taking care of the property. I do not think I joined in the conversation at all. Mr. Olmstead was called out before I was. I listened for several minutes and Col. Hillyer argued that he thought that would be the proper compensation. Mr. Latta went on to state that the property might not be sold for several years. There was no price upon the property at that time and no demand for it, and he said that in the meantime this property would have to be looked after, and he commenced figuring what would be a proper compensation, in his judgement. I think that Mr. Latta figured out several percentages and finally figured on one

820 per cent. per annum upon what the property cost would be a proper compensation. Mr. Hillyer and Mr. Latta were discussing that subject. Mr. Hillyer thought that was too much. That was the state of affairs when I was called out. That day or the next, when I saw Mr. Latta again, I asked him how the matter was determined and he said they had come to no conclusion, no final agree-

ment; that Mr. Hillyer still thought that one per cent. was too much. I do not know that the subject was over alluded to in my presence by Sunderland or Hillyer afterwards.

247 Q. What did Latta say Hillyer had concluded about the subject?

A. Mr. Latta told me that day or the next, when I asked him about their conclusion, that Mr. Hillyer thought one per cent. was too much; that he figured it along, and that Mr. Hillyer finally came up to three-quarters of one per cent. That is what Mr. Latta told me.

248 Q. You were present at the outset of this conversation, were you?

821 —. I think we went into the back room all together. I think Col. Hillyer asked us to step in there.

249 Q. Who introduced the subject of compensation, Mr. Hillyer or the firm?

A. My recollection is that Col. Hillyer did.

250 Q. What did he say? Did he call you out for the purpose of talking with you?

A. He was in the office and asked me to step in the back room and talk about the charges for taking care of this property. That was the substance of it.

251 Q. That was the inception of the interview?

A. Yes, sir.

252 Q. Then the subject was broached by Hillyer, not by the firm of Kilbourn and Latta?

A. I am almost certain Mr. Hillyer introduced the subject himself.

253 Q. Did he ask your how much you would charge him, or whether you would charge him anything or not?

822 A. I cannot remember the particular- of the conversation, only that they commenced with what would be the proper charge for taking care of this property. My recollection is that there were no prices attached to the property for which we could offer it for sale at that time, and one of the reasons given, if my recollection serves me aright, was that there was a stagnation in the real estate market. Mr. Latta said that this property would have to be looked after, the tax paid, &c.

254 Q. Is it a fact that there was no price fixed upon the property at that time?

A. No price was put on the property until some time after that.

255 Q. Did Mr. Hillyer then, or at any time within a brief period afterwards, authorize you or the firm to sell any of this property at any price?

A. I think we got some prices about two or three years afterwards.

256 Q. Not before?

A. No, sir; that is my present recollection.

257 Q. Was there any price actually fixed at which these parties would sell their property prior to the list of 1876?

A. If that is the year I cannot give the date.

258 Q. Assuming that that is about the time.

A. No price fixed prior to that.

823 259 Q. None whatever?

A. None whatever.

260 Q. What was the condition of the real estate market in 1876, at the time this valuation was put upon their property by Mr. Hillyer? Was the real estate market lively or dea t?

A. It was dead.

261 Q. How did those prices correspond with the prices paid?

A. That is impossible for me to state now, for I do not remember the prices that they put upon the property. I cannot tell definitely the price of any piece.

262 Q. As a matter of fact and as a practical business-like thing, when was this property put in the hands of Kilbourn and Latta for sale? Was it prior to the time when this list was made or at that time?

A. I do not think we could have sold the property before we got their prices. We had no prices fixed at which we were authorized to sell.

263 Q. Had you any more authority about their property—that is, in reference to the right to sell—than you had in reference to the right to sell any other man's property?

A. No, sir.

824 264 Q. If the proposition was made to you to buy any piece of property in this city you would have a right to go to the owner and ask what he would take for it. Is that about the attitude occupied in relation to the property of Sunderland and Hillyer?

A. Yes, sir. I do not recollect that we ever put a price on their property until after they gave us the price. It was never offered for sale, that I recollect, at any price we fixed ourselves.

265 Q. What is your recollection about the prices fixed upon? Were they not far above the market rates for such property?

A. It is impossible for me to state now, because I do not remember the prices they put upon it.

266 Q. When did you last see the list of prices?

A. I do not know that I have seen it for several years.

267 Q. I will now show you the exhibit attached to Olmstead's deposition, marked J. F. O. No. 3, which purports or seems to be a list of prices nominated by these gentlemen. Have you looked at that paper?

A. Yes, sir.

268 Q. In whose handwriting is it?

825 A. (After examining the paper.) Well, sir, I think it is in mine.

269 Q. You know it is, do you not?

A. I am pretty confident it is mine.

270 Q. Where did you get the information that is embodied in that paper?

A. From Col. Hillyer. I say down here "Prices suggested by C. J. Hillyer June 7th, 1876." I certainly took those prices down from him.

271 Q. Is Hillyer's signature there?

A. It is. I say "Prices suggested by C. J. Hillyer June 7th, 1876."

272 Q. Tell me about the prices nominated then. Are those reasonable prices, considering the state of the real estate market, applicable to that property? Are they high or low?

A. For that time I should call them good, high prices.

273 Q. Were they prices which would enable you to sell any of the property?

A. None of it was sold at any such figures; that is all I can say about that.

274 Q. Did you make any effort to sell it?

A. The real estate market was very dull; very little property selling at that time.

826 275 Q. What is the date of that paper?

A. June 7th, 1876.

276 Q. What price is put on square 115 by that paper?

A. $1.20.

277 Q. A square foot?

A. Yes, sir.

278 Q. That is fully as much as it was worth at that time, is it not?

A. Yes, sir.

279 Q. If not more?

A. Yes, sir.

280 Q. Now, previously to that time, between the time of the purchase of this property and the date of that paper, there really had been no authority given to Kilbourn and Latta to make any sale?

A. There had not been. We sold one lot up in square 156; I do not know whether it is 156 or not. How is that, Mr. Olmstead? What lot is that where the colored school is?

Mr. OLMSTEAD: Square 156.

The WITNESS: Yes; square 156.

By Mr. TOTTEN:

281 Q. I want you to look at that Exhibit J. F. O. No. 3 again. What is the last note made?

A. "Prices suggested by C. J. Hillyer June 7th, 1876."

827 282 Q. Who wrote those words?

A. Well, it looks like Hillyer's signature—the last of it—but it resembles generally the writing preceding.

283 Q. Did you not write it all except that you just read?

A. I wrote all that. I do not know whether I wrote the last or not or whether it is Hillyer's signature.

(Mr. Hillyer at this point examined the paper, but made no comment thereon.)

The WITNESS: I think I wrote the whole of it. That is my opinion.

284 Q. Including those last two lines?

A. I think so.

285 Q. I mean the words "prices suggested," &c.

A. I do not know. It looks very much like Col. Hillyer's signature.

286 Q. You are sure you wrote the preceding part of it—the list of prices?

A. I think the preceding is mine, but whether I wrote that last part or not I do not know.

287 Q. Have you seen that paper since you made it?

A. I have no recollection of seeing it from that day to this.

828 288 Q. Are you sure you wrote the list of property and the list of prices?

A. I think I did.

289 Q. How sure are you about the memorandum at the bottom—the prices suggested, &c.?

A. Well, sir, it looks like one of my hasty memorandums. I have no recollection of having seen it since until now.

290 Q. Did the firm ever sell any of Sunderland and Hillyer's property prior to June, 1876?

A. No, sir; not unless this lot sold to the colored school was prior to that. I do not remember that. I do not remember the date, but I understand that that lot was sold after this date.

291 Q. I hold in my hand a receipt signed by Sunderland and Hillyer and Thomas Sunderland, bearing date 10th September, 1878, for the sum of $2,715.58, which is already in testimony in connection with the deposition of Mr. Olmstead. Do you know anything about the circumstances connected with the making and delivery of that receipt by Sunderland?

A. Yes, sir.

829 292 Q. Please to state them. State, in the first place, when the receipt was made and signed, and, in the next place, the circumstances connected with it.

A. It was made in the office of Kilbourn and Olmstead, on the corner of 15th and G streets N. W., on the date stated there. Kilbourn and Olmstead and Mr. Latta were having a legal controversy, in which the question of the amount owed by Kilbourn and Olmstead to Sunderland and Hillyer was one of the points of controversy. The balance due Sunderland and Hillyer from Kilbourn and Olmstead was the amount stated in that receipt. I had talked with Mr. Sunderland, Mr. Olmstead and myself, about the settlement of that matter in some way, in order that we might use it in our controversy with Mr. Latta. Mr. Sunderland, as the result of these several conversations, came in there one morning with General Jeffries, I think, and went off in the corner a moment or two and then said, "Come in here." We went into the back room, and General Jeffries sat down and drew up that receipt and Mr.

830 Sunderland signed it, and I drew up a note for that amount for Kilbourn and Olmstead to sign, which settled the account between Kilbourn and Olmstead and Sunderland and Hillyer, and that receipt was filed in the suit between Latta and ourselves.

293 Q. Has that note been paid?

A. Yes, sir.

294 Q. Was there any understanding of any kind touching the force and effect that this receipt was to have; if so, what was it?

A. The subject had been talked about two or three times. Mr. Sunderland did not want to give any paper that would release any claim that he might have against Mr. Latta, and I think we had suggested—or Mr. Olmstead had in my presence some other paper—a way of getting at it; but there was no other paper executed. They considered that receipt, which was a receipt, as far as we were concerned, in full, but did not interfere with their claim against Mr. Latta.

831 295 Q. Was there any understanding, tacit or express, as to an existing claim on the part of Sunderland and Hillyer against you and Olmstead for anything beyond this $2,715.58?

A. Never. There was no claim. I want to say right here that I never had an intimation that they had any claim against us or proposed to have any claim against us for any amount whatever until I received a letter addressed to Mr. Olmstead and myself by Sunderland and Hillyer, just prior to the commencement of this suit, in which we are now taking testimony. On the contrary, they had stated that there was nothing—no claim against us; but they did propose in the conversation, talking about the business on account of Mr. Latta's conduct, to prosecute their claim against him. They did not say they cared anything about us; did not intimate, to my knowledge, that they paid any claim of any character whatever against Kilbourn and Olmstead, and I considered the execution of that receipt a finality, as far as we were concerned, of the bal-

832 ance due to Sunderland and Hillyer.

296 Q. Had there been any complaints made to you prior to the letter to you and Olmstead, mentioned just now by you, as to the charge for the care and management of the property or any other circumstance connected with the transactions of that firm with Sunderland and Hillyer and Company?

A. I never heard of any complaints from Sunderland or Hillyer or any one of them against Kilbourn and Olmstead of any charges they had made until the receipt of the letters that I referred to, which was a few days before this suit was commenced.

297 Q. When were the friendly relations between you and Olmstead, or you, personally, on the one side, and Sunderland and Hillyer, on the other, disturbed?

A. I do not know, I am sure.

298 Q. Was there any trouble prior to the filing of the bill in this case?

A. I never heard of any.

299 Q. There never was any, was there?

A. Never heard of any.

833 300 Q. Was there any ill-feeling prior to the taking of testimony in this case?

A. There was none. I do not know that there is any now; certainly none on my part.

301 Q. But the atmosphere is a little murkey, is it not?

A. I do not know; it does not disturb me. I am not looking at the atmosphere for others.

302 Q. Was there any manifestation of any kind, directly or indirectly, with Sunderland and Hillyer proposed to prosecute Kilbourn and Olmstead to recover back these damages or money prior to the time the testimony was taken or when we began to take tes-imony?

A. I can but repeat that I never knew of anything; no intimation, no knowledge, direct or indirect, from any source whatever; from conduct or intercourse or any thing else that any such thing was ever thought of or considered until I had received one or two letters just prior to the commencement of this suit.

303 Q. We began to take testimony in this case about a
834 year ago. Were the relations pleasant between you and Mr. Hillyer up to that time?

A. They were just prior to that time. I do not remember the date when this suit was commenced.

304 Q. This suit was begun in June, 1881, and testimony was begun about December, 1881. Was there any trouble between you personally and these gentlemen before that time?

A. Between whom?

305 Q. Between you and Mr. Hillyer, for instance?

A. No, sir.

306 Q. There is somewhat of a coolness now, is there not?

A. One thing is, the streets are so narrow we do not see one another sometimes.

307 Q. With whom did you have the conversation at the time this receipt was passed, September 10th, 1878?

A. Mr. Sunderland. I was in the office and drew up the note.

308 Q. Was anybody else present?

A. Mr. Olmstead was there, and General Jeffries was in the room.

835 309 Q. Did Mr. Sunderland, about the time this receipt was made, make any statement to you touching any claim for care and management against Kilbourn and Olmstead as distinguished from Latta?

A. No, sir.

310 Q. He made none?

A. No, sir; he did not.

311 Q. Did he say whether he cared about this charge or not?

A. I do not think he ever raised the question as far as Kilbourn & Olmstead were concerned.

312 Q. Did he ever talk with you about it as to Latta?

A. Yes, sir; we had a great many conversations about Mr. Latta.

313 Q. About when—at the time of this receipt or before?

A. Before and afterwards.

314 Q. Did he ever say anything particular as to whether he would press a claim of that character against Kilbourn and Olmstead?

A. I repeat, he never did.

315 Q. Did he say that he would not?

A. He never to my recollection raised the question at all
836 so far as Kilbourn and Olmstead's account was concerned for any charges.

316 Q. Where did the transaction resulting in this receipt take place—in this office?

A. No, sir; in the office on 15th street and G N. W. What is the date of that receipt?

317 Q. September 10th, 1878. What was the object of giving you this receipt as you understood from the conversation and bargain?

A. To settle our accounts with Sunderland and Hillyer.

318 Q. Whom do you mean by "our?"

A. Kilbourn and Olmstead—our account with Sunderland and Hillyer.

319 Q. The object was not to settle with Latta by this receipt?

A. No, sir; it was not.

320 Q. As a matter of fact it did settle the suit that Latta began against you, did it not?

A. Yes, sir; that receipt enabled us to settle the controversy between Latta and Kilbourn and Olmstead.

321 Q. In the suit pending?

A. Yes, sir; in the suit pending.

837 322 Q. Where was Latta at that time?

A. I do not know whether he was here or West; I do not remember.

323 Q. Was this receipt given before the testimony was closed in Latta's case against you?

A. Yes, sir.

324 Q. Was this used in testimony in that case?

A. Yes, sir.

325 Q. The original?

A. Yes, sir. I do not know whether the testimony was closed, but it was filed in the proceedings—filed the same day we received it, at some stage of the proceedings.

326 Q. Who was the counsel in your case?

A. Mr. Mattingly.

327 Q. I mean the equity suit of Latta against you, No. 5921.

A. Yes, sir; Mr. Mattingly was our counsel.

328 Q. We have taken some testimony in this case touching an interview at the Arlington Hotel when Mr. Hillyer was present and perhaps Mr. Sunderland, but I am not so sure about Sunderland, but an interview between you and Olmstead and Latta and
838 Hillyer touching the business of this concern with Sunderland and Hillyer. Will you state, as nearly as you can, when that took place?

A. I do not think Olmstead and I ever had an interview when Mr. Latta was present. I do not remember his being present.

329 Q. Very well; when he was not present?

A. Several days; we had interviews frequently there.

330 Q. In what year?

A. The summer of '78.

331 Q. Prior to the time this receipt was made *ever* after?

A. Afterwards.

332 Q. This receipt was made on the 10th of September, 1878?

A. It was after. That is my recollection—September, 1878. It was the summer following.

333 Q. What summer following?

A. As to dates I cannot tell anything.

334 Q. When this receipt was made, the 10th of September, 1878, was Hillyer here?

A. No, sir.

335 Q. Where was he?

839 A. I think this interview at the Arlington was the summer before. Of course I can tell after looking at the books as to the date.

336 Q. Was it along about July somewhere?

A. Yes, sir; I think the 4th of July. I think it was either the 3d or 4th of July; about the 4th.

337 Q. When this interview occurred?

A. They were at the hotel two or three days. Bull was up there with them looking over the papers, and I was up there several times.

338 Q. Bull was in their employ, was he not?

A. I think he was.

339 Q. Had previously to that time been in your employ?

A. Yes, sir; I recommend- him to those gentlemen as a good man.

340 Q. Sunderland and Hillyer were both there?

A. Yes, sir.

341 Q. And you and Olmstead were there?

A. Yes, sir; at times. I was in and out.

342 Q. What was said, if anything, about this charge that the firm had made against them for care and management of the property?

840 A. As I said, I do not remember that question coming up as far as Olmstead and I were concerned at all. They did discuss some matters about Mr. Latta and general subjects; but I have no recollection of one of them intimating anything to me or questioning any charge that was made, so far as Olmstead and I were concerned.

343 Q. Was there any claim intimated by them against Kilbourn and Olmstead for these matters involved in this suit?

A. No, sir; they knew the amount that Kilbourn and Olmstead owed.

344 Q. That was $2,715.58?

A. Yes, sir; they knew all that, whatever the amount was.

345 Q. The suit of Kilbourn and Olmstead against Latta and the equity suit of Latta against Kilbourn and Olmstead were both instituted in our equity court on the 10th of November, 1877?

A. Yes, sir; I remember that date.

346 Q. Now, do you remember sending or causing to be sent to Mr. Hillyer or to Mr. Sunderland copies of the bills in each of those cases?

A. Yes, sir.

841 347 Q. Do you remember an account current or an account stated, as we would call it, being sent with these bills and probably one answer or more to Mr. Sunderland?

A. I do not remember to whom they were sent—that is, to which one.

348 Q. I want to get your attention not to the bills, but to the account stated, bearing date 10th of November, 1878. Do you remember anything about sending such an account or having it sent to Mr. Sunderland?

A. I will state that in brief: Mr. Olmstead and I discussed this controversy with Mr. Latta. We did not know what Mr. Latta had written to Sunderland and Hillyer, and we came to the conclusion that instead of writing out any explanation or saying anything about it we would send them a complete transcript of the suits and the accounts, so that they could see precisely how matters stood without any statement from us.

349 Q. Did you do it?

A. Yes, sir.

842 350 Q. Do you remember about the account having been sent to either of them?

A. The whole account and the record of the bills and answers, so that they should be in possession of the entire information and draw their own inference from the facts as we laid them before them by sending these documents. Whether they were sent to Col. Hillyer or to Judge Sunderland I do not know.

351 Q. Did you see the account the other day which was offered in testimony when Mr. Olmstead was on the stand, dated November 10th, 1878, showing the item for care and management?

A. I did.

352 Q. Did you recognize that as being the account sent at the time you sent these bills?

A. That is the account of the exact situation at the time, but I do not know whether that is the identical paper that was sent or not, but I think it was. I believe it was.

353 Q. Assuming that that account, dated November 10th, 1878, which showed the charge for care and management was sent

843 at the time, how soon after that or where did you first hear any complaints as to Kilbourn and Olmstead touching that charge or any other?

A. The commencement of this suit.

354 Q. You had a letter, perhaps two letters, addressed to Kilbourn and Olmstead by Sunderland and Hillyer just prior to the beginning of the suit, had you not?

A. Yes, sir.

355 Q. Have you seen those lately?

A. I have not.

356 Q. You do not know the date of them, do you?

A. I do not.

357 Q. Very soon prior to the beginning of the suit?

—. That is my recollection. I want to state that the first inti-

mation I had of anything was upon the receipt of those letters, which, I think, were dated a very short time prior to the commencement of this suit.

Adjourned to Tuesday, the 17th inst., at 3.30 p. m.

WM. T. S. CURTIS, *Examiner.*

844 Met Oct. 17th as afore, but as other witnesses were present the examination of Mr. Kilbourn was not continued. Adj. till Oct. 18.

OCT. 18TH.

Met, and Mr. Olmstead was cross-examined by Mr. Hillyer and re-examined by Mr. Totten, and an adjournment was taken until the 19th.

WM. T. S. CURTIS, *Examiner.*

OCT. 19TH.

Met. All parties present. Mr. Kilbourn was presented by Mr. Totten for the purpose of being cross-examined by Mr. Hillyer, but as the testimony-in-chief was not written out Mr. Hillyer refused to go on, whereupon an adjournment was taken until the 20th inst.

WM. T. S. CURTIS, *Examiner.*

WASHINGTON, D. C., *Oct.* 20, 1882.

Met pursuant to adjournment.

Present: Counsel on both sides.

Mr. Kilbourn was here produced for cross-examination, but Mr. Ralston refused to cross-examine until he had sufficient time to read the direct evidence of Mr. Kilbourn, the testimony not having come into the hands of plaintiffs' counsel.

Adjourned until to-morrow, at 3.30 p. m., Oct. 21, 1882.

845 OCT. 22, 1882.

Met pursuant to adjournment.

Present: Counsel on both sides.

Adjourned until to-morrow at 3.30.

OCT. 23 —p. m.

Met pursuant to adjournment.

Present counsel on both sides.

Cross-examination of HALLET KILBOURN by Mr. HILLYER:

358 Q. You have spoken of negotiations for the purchase of square 115 having continued through a long period of time. Were those negotiations made for the purpose of purchasing for yourselves or for the purpose of purchasing for others, making sale to others?

A. For the purpose of purchasing for ourselves.

359 Q. Did you tell the complainants in this case, or do you know of their being told at any time prior to their purchase, the fact that you had been or were negotiating for the purchase of this

square for yourselves—I mean, for the firm of Kilbourn and Latta?

846 A. I know I informed the complainants in this case that we were negotiating for the square and had been for some time.

360 Q. You do not understand my question. The question was whether you informed them that you were negotiating for the purchase of it for yourselves.

A. I do not know whether I stated that to them or not.

361 Q. So far as you know, then, the complainants did not know the fact that you were the purchasers or that you were negotiating for the purchase for yourselves of this property prior to the sale to them?

A. They could infer that fact from my stating to them that we had been negotiating for it for a long time.

362 Q. Except by that inference you do not know of their having any knowledge of the fact that these negotiations were for yourselves?

A. I do not know that I ever stated to them that we were buying for ourselves, and do not know but I did. I do not remember in regard to that.

363 Q. At the time of the purchase from Mr. Young for the Real Estate Association of square 156 were you the agent of the

847 Real Estate Association.

A. I think that is the first purchase that we made for them. I do not know whether it is the first purchase that we made for the Real Estate Association. I think we acted as the agent of Mr. Young to sell that square.

364 Q. Were you at that time an agent for the Real Estate Association?

A. Yes, sir; we were buying property for the Real Estate Association at that time.

365 Q. Were you acting on behalf of the Real Estate Association in making this purchase?

A. Yes, sir.

366 Q. In the case of the sale from Mr. Young to the Real Estate Association was it the duty of the firm of Kilbourn & Latta, by reason of their relations to the respective parties, to obtain for Mr. Young as high a price as could be obtained or to purchase the property for the Real Estate Association at as low a price as could be obtained?

Mr. WILSON: That is objected to, first, because it is calling upon the witness to state a legal conclusion; and, secondly, because

848 it is wholly irrelevant to the matters in issue in this case; and I would suggest to the witness not to answer, but to let the court decide whether he should answer it or not. I make this suggestion for the purpose of getting the opinion of the court as to the competency of the testimony sought to be elicited by the question.

Mr. TOTTEN: I concur in that objection. I think that is a good suggestion.

The WITNESS: Very well, then; I shall not answer it.

(By Mr. HILLYER:)

367 Q. How could you be, as you stated, the agent for the Real Estate Association and at the same time take a commission from Mr. Young for selling the property to them?

Mr. WILSON: That question is likewise objected to for the reason stated in the objection to the preceding question; and the same suggestion is made to the witness for the same reason.

(By Mr. HILLYER:)

368 Q. Did your firm at that time have any interest in the Real Estate Association? I mean at the time of the purchase of
849 this property from Young.

Mr. WILSON: That question is likewise objected to for the same reason as was stated in the objection to the preceeding question, and the same suggestion is made to the witness.

(By Mr. HILLYER:)

369 Q. Were you in making sale to Sunderland and Hillyer the agents of the Real Estate Association?

A. The sale of what?

370 Q. The sale of square 156.

A. I think we were.

371 Q. Did you at that time have any interest in that association?

Mr. WILSON: I object to that for the same reason as stated before, and with like suggestion to the witness.

The WITNESS: I decline to answer the question upon the advise of counsel.

By Mr. HILLYER:

372 Q. Did you consult any of the members of the Real Estate Association in reference to the sale to Sunderland and Hillyer prior to the making of that sale; and, if so, whom?

Mr. TOTTEN: That is objected to for the same reason.

850 The WITNESS: I make the same answer at the suggestion of counsel.

By Mr. HILLYER:

373 Q. Do you decline to answer by advise of counsel?

A. Yes, sir; the counsel on my right here, Mr. Totten, advises me not to answer it.

374 Q. When you purchased an interest of Judge MacArthur in the Real Estate Association did you inform him or had you previously informed him? Did he know of the fact of the sale of this

property and the profit which had been realized upon the sale by the Real Estate Association?

Mr. WILSON: The question is objected to for the same reasons as stated before, and for a like purpose the same suggestion is made to the witness.

The WITNESS: I make the same answer.

Mr. HILLYER:

375 Q. That is, you decline to answer the question?
A. I decline to answer under the advise of counsel. I understand it has nothing to do with this case.

376 Q. Did you, holding the property as trustee for the
851 Real Estate Association, execute to Latta, as trustee for Sunderland and Hillyer, two deeds—that is, for square 156?

Mr. WILSON: I object to that, first, because it is indefinite; secondly, because it is immaterial and irrelevant; and, thirdly, because the conveyances themselves, if any such are in existence, are the best evidence.

The WITNESS: I make the same answer.

By Mr. HILLYER:

377 Q. I understand that you decline to answer the question.
A. Upon the advise of counsel I do.

(At this point there was a consultation between counsel for the defendents, and the witness was directed to answer the question.)

The WITNESS: I executed a deed to Mr. Latta. Whether I executed two or not I do not know. The deeds will speak for themselves.

378 Q. Do you not remember executing the first deed in May, then again in October executing the second deed for the reason there was a defect in the form of the deed not stating the fact that
852 it was made by consent of the owners of the property?

A. I do not know. If I executed two deeds I do not remember anything about it.

379 Q. Who received the profit which was made on square 156?

Mr. TOTTEN: I object to that for the same reason as was stated before.

The WITNESS: It was credited to the Real Estate Association.

By Mr. HILLYER:

380 Q. Was it paid to any member of that association, or any portion of it?

Mr. WILSON: I object to that for the same reason given in the objection raised before.

Mr. TOTTEN: I object to it for the further reason that it has been explained three or four times and is not pertinent to this case.

(By Mr. HILLYER:)

381 Q. Is it true or not that any member of the Real Estate Association, who was a member of that association at the time of that sale, or any one else than the firm of Kilbourn and Latta actually received any portion of the profit which was made on the
853 sale of square 156?

Mr. WILSON: That is objected to for the reason stated before, and the same suggestion is made to the witness—that he shall not answer.

The WITNESS: My answer is the same.

By Mr. HILLYER:

382 Q. That is, you decline to answer?

A. Yes, sir; under the advise of counsel. It has nothing to do with this case.

383 Q. Were you agent for Riggs in the sale to Sunderland and Hillyer of square 195?

Mr. TOTTEN: That is objected to. That is a question of law and not *affect*.

The WITNESS: I think that Col. Berret was the agent in that negotiation for Sunderland and Hillyer.

By Mr. HILLYER:

384 Q. Do you understand the question? Perhaps it had better be read again.

The stenographer read as follows:

"Were you agent for Riggs in the sale to Sunderland and Hillyer of square 195?"

854 A. I do not think we were. I think that Col. Berret acted for Sunderland and Hillyer in that negotiation; that is my recollection.

385 Q. The question is whether you acted as agent for Riggs.

A. Ac-ording to my recollection we did not have anything to do with the purchase of that square. We were not the agents for anybody.

386 Q. Did your firm, in any transaction, act as agent for Mr. Riggs, as far as you know?

A. I cannot recollect whether we ever sold any property for Mr. Riggs or not. We may have sold considerable for him, but I do not remember now. If there were operations and my attention were called to them it might refresh my memory, but I cannot recall any now.

387 Q. Do you not know, as a fact, that Mr. Riggs never employed a broker?

A. I do not know anything about that.

388 Q. Why do you suppose that the services in the care and management of property by your firm for Sunderland and Hillyer commenced immediately after the purchase of the property?

855 A. Because I think we paid the taxes and gave attention to the property as soon as any accrued after the purchase was made.

389 Q. Was there ever, as far as you know, anything said at all about that time in reference to the firm of Kilbourn and Latta taking the care and management of this property?

A. I remember, as I stated in my direct testimony, the conversation that was had with you, but the date I cannot state.

390 Q. I mean previously to that conversation to which you have referred.

A. I do not remember any special conversation with regard to it.

391 Q. Was there anything actually done by your firm prior to the departure of Mr. Sunderland for Europe in May, 1873?

A. I cannot state from memory whether there was anything done. The books will show.

392 Q. Did your care and management commence while the complainants were here and before Mr. Sunderland went to Europe?

856 A. If there were any payments to be made or any taxes to be paid on the property or the property required any attention on our part it was attended to by us. But at this time I cannot remember, and therefore I have to answer as I did before. The books will show about that.

393 Q. You have stated in your direct examination that you think the firm of Kilbourn & Latta borrowed money on the property of Sunderland and Hillyer. When was that done?

A. I do not know that I can come near to it. I cannot state the time or the amount. I know that we borrowed some money; whether it was for Sunderland & Hillyer or whether it was for the other association I cannot state distinctly. I can only say this, that if we did borrow any money for Sunderland & Hillyer or their property the proper entries would be on the books. I cannot state from memory. I am not clear on that question whether we borrowed any money, and how much, or if we borrowed any for Sunderland

857 & Hillyer. My testimony might have got it confounded with the loan that we negotiated for the Real Estate Association.

394 Q. Do you now say that the firm of Kilbourn & Latta ever borrowed money upon their own obligations for the use of Sunderland & Hillyer?

A. No, sir; I will not say we did without I can ascertain the fact, if it is a fact, from the books.

395 Q. What were the notes of Sunderland & Hillyer that were not paid at maturity, either the interest as it accrued or principal as it matured?

A. I cannot state from memory what notes were in default. It can be shown from the books. I know that parties used to come into the office to make inquires about payments that were due. I think that occurred several times during the last two or three years we had charge of the property.

396 Q. Is it not a fact that up to July, 1876, every obligation of Sunderland & Hillyer was paid as it matured?

A. I cannot say to the contrary. I can only refer to the books to explain that and all other questions in regard to payments
858 upon Sunderland & Hillyer's property. What time it was—whether it was after July, 1876, or before that—I cannot remember. I cannot remember when persons who held obligations were in there about getting their pay for interest. I do remember Miller and a man upon Connecticut avenue, Captain—I cannot remember his name.

397 Q. Were there any notes overdue and unpaid of Sunderland & Hillyer upon which the creditors desired payment at the time of the dissolution of the firm of Kilbourn and Latta?

A. I think that there was a payment due to Willard about that time—about the time of the dissolution of Kilbourn & Latta. That is the only one I recollect now.

398 Q. Why did not the firm pay it?

A. Well, they did after a while.

399 Q. Why did they not pay it when it was due, as they had in their hands $18,000 that belonged to Sunderland & Hillyer?

A. There was some question between Latta, after that dissolution, and Kilbourn & Olmstead, his successors, in which that entered into. I do not pretend to state at this length of time the
859 reasons why it was not paid at that time.

400 Q. Do you say there were any creditors that wanted payment at that time?

A. I do not know. There was a payment to Willard, but whether that was after the dissolution of Kilbourn & Latta I cannot remember. All I know is that it was entered on the books at the proper dates, but I cannot say whether it was before or after the dissolution.

401 Q. At the time of the dissolution of the firm of Kilbourn & Latta, Kilbourn and Olmstead took these funds into their hands to disburse?

A. Yes, sir.

402 Q. If there were any creditors would not Kilbourn & Olmstead disburse that money?

A. They did disburse it.

403 Q. Would they not have disbursed it until it was exhausted to any creditor to whom money was due?

A. I suppose they would have done so. If there was enough to satisfy the claims that were due they might use it as far as it would go. I do not remember what claims, if any, were due at that time. It is only from memory.

860 404 Q. If you do not remember anything about these claims being due and these creditors pressing how can you testify that the credit of the firm of Kilbourn & Latta was injured by reason of sums due by Sunderland & Hillyer at the time they matured?

A. I remember there were times when persons came into the office. I remember Mr. Müller and some one upon Connecticut avenue, a Captain Henning; but what year it was—whether it was prior to the dissolution of Kilbourn & Latta or not, I do not know.

It may be that this money was received after their coming in there so repeatedly. I cannot tell from memory the date, but I know that there were parties who called there when we did not have money to pay.

405 Q. That must have been before the dissolution of the firm of Kilbourn & Latta, because Kilbourn & Olmstead had money all the time up to June, 1878, did they not?

A. I say it may have been; I cannot say the time.

861 406 Q. If that is the case how are you able to say that the credit of the firm of Kilbourn & Latta was injured by reason of the failure to make these payments?

A. I suppose that Kilbourn & Latta did not have any money at the time these payments became due, but had it subsequently. The annoyance would be all the same, however.

407 Q. Do you say it is a fact?

A. I know there was a great deal of annoyance about it, and that probably was an element that entered into it.

408 Q. Do you know how much was due Mr. Müller at the time of the dissolution of the firm in 1877?

A. I do not.

409 Q. Do you know how it was secured?

A. Secured on real estate.

410 Q. Was it not secured on square 66?

A. I presume that is correct.

411 Q. Was it not a fact that that mor-gage covered the whole square, and therefore covered the square on which was erected the house built by Mr. Hillyer which cost $55,000?

A. That I will not undertake to say, but I considered the security good. I do not know whether it included your house or

862 not.

412 Q. Do you mean to say that the credit of the firm of Kilbourn & Latta was injured by reason of the non-payment of this $10,000 due Mr. Müller?

A. Yes, sir; it was injured. The credit of any firm would be injured doing business in that way, if the property was sold for non-payment at public sale in order to meet the liabilities.

413 Q. You had more than this $10,000 in your hands at the time of the dissolution of the firm. Why did you not pay Mr. Müller?

A. This may have occurred before Mr. Müller was paid. I do not remember when he was paid.

414 Q. Are you able to state any business transaction connected with the property of Sunderland & Hillyer by which the credit of Kilbourn & Latta was injured?

A. I know that the payments of some of these men were not promptly made, and some of these people came to us to get their money. I can remember Mr. Müller and Capt. Henning. Those are two persons I can remember. It was not attended to, and because their property was managed by Kilbourn & Latta I

863 considered it did affect their credit.

415 Q. Do you remember the amount that was due to Mr. Henning?

A. I do not.

416 Q. Do you know that the firm of Kilbourn & Latta did not have money enough in their hands to pay this demand?

A. I do not know anything about the amount of money they had, if they had any. I suppose if we had money in our hands it would have been paid.

417 Q. Did Kilbourn & Olmstead have this $18,000 in bank or did they use it for their own purpose?

A. I suppose it was in bank.

418 Q. Do you not know it was in bank?

A. No, sir; I do not know. The books will show what disposition was made of it.

419 Q. You mean to say that you might have used it or you might not?

A. I say I cannot remember anything about those things—that is, the details as occurred at the time, but I can answer by the books. I do not carry those things in my head.

420 Q. If Mr. Olmstead has testified that the $18,000 was used by Kilbourn & Olmstead and could not have been repaid by
864 them prior to May, 1877, is there anything in your recollection which contradicts that statement?

A. No, sir. Mr. Olmstead knows a great deal more about it than I do, and he would be clearer about it.

421 Q. In answer to the question in regard to Kilbourn & Latta "sweating under the load which they carried" for Sunderland & Hillyer, I want you to specify the time when they did sweat.

A. Read my answer to that question; that is the answer I want to make; the answer that I gave to the question before.

By Mr. TOTTEN:

422 Q. Do you want to repeat you- answer?

A. Yes, sir.

By Mr. HILLYER:

423 Q. What is the reason, if it was so important in the suit between Kilbourn & Olmstead and Latta, in 1877, or in 1878 rather, that their balance of $2,715 that was owing by Kilbourn & Olmstead to Sunderland & Hillyer should be paid in order to settle that suit, why Kilbourn & Olmstead did not pay it to Sunderland & Hillyer?

865 A. Sunderland & Hillyer had credit for that amount upon our books.

424 Q. Did you have the money to pay it?

A. I do not know whether we did or not; I suppose we did.

425 Q. If so, it would have been a very simple settlement of it to have paid it, would it not?

A. Yes, sir; it was settled as it was. We did business for Sunderland & Hillyer for that amount. We paid them in labor and services for the amount instead of paying them in money.

426 Q. That was subsequently that these services were performed?

A. Yes, sir.

427 Q. What were your circumstances in 1877?

A. I do not know.

428 Q. What I mean by that is whether you were embarrassed pecuniarily or not.

A. Me?

429 Q. Yes, sir; you.

A. Does that have anything to do with this case?

Mr. WILSON: I do not see that it has.

The WITNESS: I was interested in a good deal of property, but had not much ready means.

866 By Mr. HILLYER:

430 Q. Is it not a fact that Mr. Latta commenced suit against you to attach the furniture in your house to pay a claim of money due from you to him?

A. That is absolutely false; he never attached anything against me in the world.

431 Q. Were you indebted to Mr. Latta at the time of the dissolution of the firm, or you and Olmstead together?

A. No, sir.

432 Q. Did Mr. Latta get his share of this charge that was made for care and management of property?

A. He did.

Mr. WILSON: That is immaterial to this case.

The WITNESS: I will say he did.

By Mr. HILLYER:

433 Q. Sunderland & Hillyer agreed through Sunderland, in order to help you in this suit against Latta, to take a note for this $2,715 instead of taking the money. Is it not a fact that they did that because you represented that it was inconvenient to pay the money, and yet you wanted the receipt?

867 A. Now, it is possible that that is so, but I do not remember any conversation to that effect.

434 Q. When was the sewer tax repealed by act of Congress?

Mr. TOTTEN: That is objected to. The statute will show for itself.

By Mr. HILLYER:

435 Q. Do you know?

A. I cannot remember the year. I cannot remember back so long.

436 Q. Do you remember whether it was before or after the dissolution of the firm of Kilbourn & Latta?

A. It was before, in my judgment.

437 Q. Was it repealed as early as the first of January, 1874?

A. I will not undertake to give the year. I cannot state that; but I think it was before Kilbourn & Latta dissolved. That is my recollection.

438 Q. When did you struggle against this sewer tax commence—at least relative to its repeal—at the time of its repeal?

A. Whatever the year was I cannot tell; but there was a movement to get free of the taxes and to get reduction of the assessments.

868 The Board of Public Works had appraised the property at exorbitant prices, which we protested against. I think they were revised afterwards and reduced.

439 Q. How long was that effort of your firm in regard to the reduction of your taxes, either generally or for Sunderland & Hillyer, going on—that is, I want to know whether it commenced as early as the first of January, 1874, or whether it commenced in 1873?

A. I cannot say when the people realized the enormity of the tax—when there was any effort to get relief.

440 Q. Do you mean to say that you made any attempt to get released from taxes in 1872 and 1873?

A. I do not. I cannot say what year it was made.

441 Q. I wish you would look at these letters (handing the witness a couple of letters) and see by whom they were signed.

A. That is signed by Kilbourn & Latta.

442 Q. Whose signature is that?

A. Mr. Latta's signature is to this one. This is November 19, 1873.

(The letter was here offered in evidence and marked "H. K. No. 1.")

869 The WITNESS: This is in my handwriting. It is dated September 5, 1873, and signed by myself for the firm.

(The letter was here offered in evidence and marked "H. K., No. 2.")

By Mr. HILLYER:

443 Q. Will you be good enough to look over those letters in order that I may ask you one or two questions about them in connection with your testimony?

A. Yes, sir.

(The witness here examined the first letter.)

444 Q. Do you think, after looking at that letter, that prior to its date you had made or were making any efforts about getting rid of the sewer tax?

A. I do not remember when the sewer tax was assessed. I cannot state.

445 Q. That is all the question I have to ask about that.

A. We always worked faithfully to get as low an appraisement on property and as low taxes as we could.

446 Q. Now look over the other letter.

A. Yes, sir. (After examining "Exhibit No. 2.") Well, sir, I am willing to answer anything in reference to this now.

870 447 Q. Is it not apparent to you that you were incorrect when you stated that Mr. Sunderland had not written to you a business letter?

A. I think the only letter I ever got from Mr. Sunderland was a brief note to pay somebody twenty-five dollars. I think that was the only letter that I got from Sunderland. This says: "Yours of the 18th ult. from Interlachen, Switzerland, duly received. In reply thereto we enclose statement of account to yourself," &c. If I received a letter from him I presume we have it. This indicates that we got some letters from him; but the only letter that I can remember is a note to pay somebody twenty-five dollars.

448 Q. At the time you wrote that letter was the firm making an effort to procure the reduction of this tax of which I have spoken?

A. Yes, sir; the reduction of taxes. I do not know whether the sewer tax was assessed at that time or not.

449 Q. The taxes, general or special, which you recom-
871 mended to Mr. Sunderland to furnish money to pay were not at that time being fought by you in the way that you stated?

A. These were special improvement taxes for which we could buy bonds, as I said there, at a reduction from their face value, and we could use them to pay the taxes. I do not know that anybody was fighting the tax at that time.

450 Q. Did you ever make an effort—I speak now of the firm of Kilbourn & Latta up to the time of its dissolution—to obtain a revision of special improvement taxes?

A. Yes, sir; I think the firm of Kilbourn & Latta fought the special improvement tax. Mr. Olmstead, I know, specially devoted a great deal of time to have them equalized—put down—on your property and everybody else that we were acting for, and my recollection is that there were large reductions in the appraisement as the result of his persistent efforts.

451 Q. Are you talking now of special improvement taxes?

872 A. General taxes. I will not undertake to define what taxes.

452 Q. I asked you, do you know whether there was any reduction made by the firm of Kilbourn & Latta of any special improvement tax?

A. I cannot specify any tax.

453 Q. Can you say any reduction was made?

A. I cannot say whether it was a special tax, sewer tax, or general tax. I remember the taxes on the property, but whether it was special or general I cannot now undertake to say.

454 Q. You cannot testify, then, of your own knowledge that there was any reduction of the special improvement tax or revision of it by the firm of Kilbourn & Latta?

A. I cannot state which tax or whether it was all of them. Mr. Olmstead gave special attention to them because he was familiar with them. His testimony would be clearer upon that subject than mine.

455 Q. Did not each of the deeds which were made to Latta, as trustee for Sunderland & Hillyer, contain a power authorizing him to sell the property without reference to any consent of Sunderland & Hillyer?

873 Mr. TOTTEN: I object to that.

The WITNESS: The deeds will speak for themselves. I will not undertake to say what the deeds contain. I know that we should not undertake to sell the property without their knowledge and consent.

456 Q. Why were these deeds taken to Mr. Latta, as trustee, unless it was for the purpose of conveniencing a resale?

A. I think that was one of the considerations; so that, whenever the sales were made, he was the only one to execute the deed, instead of the several parties and their wives joining.

457 Q. Am I to understand you to say in your direct testimony that this property was not in the hands of the firm of Kilbourn & Latta prior to 1876?

A. That is my recollection. I do not think we were authorized to sell it. I have no recollection of any price being put upon it. The date I cannot tell if it was not in that memorandum that was put in evidence.

874 458 Q. That memorandum is the prices put to the whole square wherever it was situated.

A. I do not know whether it is or not. It speaks for itself.

459 Q. Do you consider that memorandum of the price of square 115 so much and square 156 so much?

A. I understand it just as it reads exactly—that those were prices that were put upon these respective pieces of property.

460 Q. Were all of the lots in square 156, for instance, of equal value?

A. No, sir; I suppose not.

461 Q. If a seller was fixing the price at which the property were to be sold it would be necessary for him to distinguish the lots in these different squares, would it not?

A. If you want to sell them off by lots you might put the price on the whole square and average them at so much. I can understand that, but I don't know anything about the prices except just as they are stated there.

462 Q. Am I to understand you to say that this property was not in your hands for sale before 1876?

875 A. According to my recollection, as refreshed by that memorandum, I think that we were not authorized to offer it for sale prior to that time. If we should have gotten any offers we should have submitted them to you, but I do not think it was in the market.

463 Q. Did you know that Sunderland & Hillyer wanted to sell that property?

A. I know they did not for some time; several years they did not want to.

464 Q. If they had been pressed in their pecuniary circumstances in such a way as not to meet their obligations is it likely tney would have wanted to sell it?

A. We had great faith in that property and we used to consider, when talking among ourselves, that they were going to stick to that and hold on to it. We heard that Mr. Sunderland was loosing

money in mining stocks in the West, and we figured it that he would probably hold on to this property.

465 Q. What was it that Sunderland & Hillyer had against
876 Latta in 1878 in their several conversations that you mentioned in which they spoke of not caring for prosecuting Kilbourn & Olmstead and of going for Latta?

A. I did not say anything in my testimony about their not caring for Kilbourn & Olmstead. Somebody else spoke of that. One of the complaints that they had of Latta was that he was away and they could not get at him to get the title to their property.

466 Q. Do you say that Latta refused at that time to give the title to that property?

A. I understand that about the time you were coming he was away. General complaint of that kind was made that you could not have a personal interview with him.

467 Q. Do you know of any complaint that Sunderland & Hillyer had to make at that time against Mr. Latta in regard to the transaction of the business of the firm of Kilbourn & Latta except the charge for care and management?

A. I do not know that they made any complaint to me
877 about Mr. Latta for the care and management of property by Kilbourn & Latta. My recollection is now that Mr. Latta made some independent charge against Sunderland & Hillyer independently of this charge of Kilbourn & Latta for care and management of property, and that was what they were complaining of.

468 Q. Can you remember what that charge was?

A. No; I do not know.

469 Q. Do you state positively there was any such charge?

A. I state positively that was my understanding. That is my recollection now—that you complained about some charge that Mr. Latta had made. That was one of the reasons—you did not seem to get control of your property. That is only what I gathered, according to my recollection now, from the conversation with Sunderland & Hillyer. I do not know but Mr. Latta was here at the time. I know there was something said about getting possession of property, and there were complaints made. I do not know whether
878 it was after or before, but there was something said about them not being able to see Mr. Latta. It may have been after that.

470 Q. So far as the charge for care and management was concerned by the firm of Kilbourn & Latta, Kilbourn & Olmstead were equally responsible and equally to blame, were they not, with Latta (if there was any blame) for making such a charge?

A. The firm of Kilbourn & Latta, which included Kilbourn, Latta, and Olmstead, made that charge for care and management of property and were responsible as a firm.

471 Q. Do you know any circumstances connected with making that charge which should cause any difference in the feeling of Sunderland & Hillyer toward Latta and toward Kilbourn & Olmstead?

A. I know of no reason.

472 Q. Did you not represent to Sunderland & Hillyer that it was Latta's charge and that Latta took the responsibility about making it?

879 A. Oh, no; it was a matter of consultation with the firm when the charge was made, and the firm was responsible. No individual was responsible for that. I do not know who originally suggested it. It grew out of the first conversation, I presume, two or three years before that.

473 Q. Were you not, in the year 1877, indebted to Mr. Latta?

Mr. TOTTEN: I object to that. It is wholly irrelevant to the case, and I advise the witness not to answer.

The WITNESS: I decline to answer upon the advice of counsel.

By Mr. HILLYER:

474 Q. In the conversation in the Arlington Hotel, in July, 1878, do you not remember that Mr. Sunderland objected very strenuously to the charge made against him for the thousand dollars commission on the Stewart sale?

A. No; I do not remember anything about it.

475 Q. Do you not remember his making a remark of this kind: "Do you think I am damned fool enough to pay such a charge as that?"

880 A. To tell you candidly, I do not remember anything about it. He may have said it, but I do not remember it.

Mr. HILLYER: I want to test the question whether the witness shall answer the question in regard to square 156, and I want to make agreement, if we can, to take it up in a way to save me the trouble of making out the papers.

Mr. WILSON: That is all right; we will make the agreement.

Mr. HILLYER: Then I am through with the witness.

Redirect examination by Mr. TOTTEN:

476 Q. How long would it take the mail to go from Washington to Virginia City?

A. About a week—five or seven days.

477 Q. How long does it require the United States to carry mails to San Francisco?

A. I think seven days to San Francisco and I think a day less to Virginia City. That is my recollection.

478 Q. Do you remember having made a loan from Jeffries or of the firm having made a loan from Jeffries to Sunderland & Hillyer of $50,000 in 1876?

881 A. I knew there was a loan made through Gen. Jeffries, but the year I cannot state.

By Mr. WILSON:

479 Q. With reference to square 115, you have been asked as to what you informed these complainants. Now, I will ask you to

state if you did not inform them the price at which they could have the property.

A. Yes, sir; I did.

480 Q. I ask you to state whether they did not examine that property and determine for themselves whether they would take it at the price you wanted.

A. They did. I stated that before.

481 Q. Now, as to square 156. Did you not inform them the same way as to that?

A. Yes, sir. I stated that distinctly.

482 Q. And all the other property that they purchased, so far as you had anything to do with it?

A. Yes, sir.

483 Q. How long is it since you have looked over books of Kilbourn & Latta?

A. Several years.

484 Q. Did you look after the details and keep the run of the details of this business?

A. I did not.

882 485 Q. Who did keep the run of the details—that is, of the books?

A. Mr. Bull was our book-keeper, and Mr. Latta and Mr. Olmstead. Mr. Olmstead principally paid attention to the details. He is more familiar with the details than I am.

486 Q. You have never looked at these books for several years?

A. No, sir; I never did have a good knowledge of them.

487 Q. You attended to the business outside and only had a general knowledge of the details?

A. Yes, sir; that is it, exactly.

488 Q. You have stated something in reference to the complaints that Mr. Latta would not convey this property to the plaintiffs. Now, I will ask you to state if it is not a fact that Mr. Latta objected to making these conveyances because his notes to a large amount were outstanding and he wanted his liabilities and responsibilities concluded by relief from them before he made these conveyances.

A. That is my understanding of the position taken by Mr. Latta. Here is one thing that I want to say about these charges

883 for care and management of property to sustain the position that I have taken in this matter: That I knew nothing of any complaint in this matter, for when Mr. Olmstead and I dissolved partnership, in the spring of 1879, if there had been any charge or any knowledge or suspicion that there was anything to be held against us by Sunderland & Hillyer or any account it would have been taken into consideration in our dissolution. As I stated before, I never knew of any claim that they had against us of any kind whatever.

TUESDAY, *October* 31, 1882.

Met at 4 o'clock p. m.

Present: Mr. Jere. Wilson, of counsel for the defendants, and Messrs. Hillyer & Ralston, counsel for complainants.

HALLET KILBOURN recalled on behalf of the complainants.

By Mr. HILLYER:

489 Q. When was the Real Estate Association formed?

A. I think in 1871.

884 490 Q. About what time in 1871?

A. Well, I cannot say; in the spring or summer; some time in 1871, I think. It may have been in 1870, but I think it was in 1871.

491 Q. Who composed it when found?

A. Ultimately?

492 Q. I am asking who composed it when first found. Who composed it originally?

A. Jay Cooke & Co. put in $25,000; Judge MacArthur, $5,000; Belknap, $5,000; Eldredge, $5,000; Pierce M. B. Young, $5,000.

493 Q. Parker also?

A. Eli S. Parker—I had forgotten him—$5,000.

494 Q. Was this money that you have mentioned actually paid in by the several persons you have mentioned?

A. Yes, sir.

495 Q. In whose name was the money that was put in by those who were members of the Real Estate Association kept in the bank?

A. I do not know how it was kept in the bank. I think it was put to credit of the Real Estate Association, Kilbourn & Latta, or Latta as trustee. That is my recollection. It is only a matter of recollection.

885 496 Q. Who had the right—I mean the legal right—as also the privilege, according to the understanding of the association, to draw that money when placed in the bank?

A. Kilbourn and Latta.

Mr. WILSON: I want to indicate in this testimony and have it so put down by the stenographer that counsel for the defense objects to the foregoing questions and answers for the reason that the same are wholly irrelevant and illegal.

The WITNESS: What was the last question asked?

The stenographer read the question from his short-hand notes, as follows:

"Who had the right—I mean the legal right—as also the privilege, according to the understanding of the association, to draw that money when placed in the bank?"

The WITNESS: Kilbourn & Latta & possibly Latta, as trustee. I do not remember how the che-ks were signed. I want to state here that that money was put into the First National Bank.

886 I think it did not pass through our hands originally. That is my recollection of it.

(By Mr. HILLYER:)

497 Q. Were you the agents of the Real Estate Association to buy property? I mean by you the firm of Kilbourn & Latta.

Mr. WILSON: I object to that question for the reason as stated above.

The WITNESS: It was a speculation started by these gentlemen, in which Kilbourn & Latta were to buy and sell and manage property, the brokerage, and commissions, and then divide the profits. That was the original plan of operations when that $50,000 was put up, as I understood it at that time, and it was expected that there would be considerably more.

Mr. HILLYER: The stenographer will please read the last question to the witness, together with his answer.

The stenographer read from his short-hand notes as desired.

Mr. HILLYER: I have had the question read to you, Mr. Kilbourn, together with your answer, because I wish to know whether the answer is accurately recorded.

887 The WITNESS: We had the entire control of the purchase of property as regards price, location, and everything. It was left entirely to our judgment.

(By Mr. HILLYER:)

498 Q. When first did any interest in the Real Estate Association change hands?

A. I cannot tell, but I think the first time it changed hands was when Judge MacArthur sold out.

499 Q. In December, 1873, was it not?

A. I do not remember the date. I cannot state it as such; I do not remember. If that is the date it is correct—by Judge MacArthur.

500 Q. Prior to these sales — the firm of Kilbourn & Latta you know of no charge of interest in the Real Estate Association, as I understand it?

A. No parties had sold their interest out. We were not—whether it was that time or after that I do not know, but I complained that they did not carry out their arrangement about a division or one thing or another; whether prior or after that I do not remember. I know the thing twisted around some, but I know of no sale of any interest prior to that.

888 501 Q. How much money did Judge MacArthur pay into the association?

A. I think——

Mr. WILSON: I object to that because it is irrelevant and immaterial.

The WITNESS: I think $5,000.

Mr. WILSON: I object to that question because it is irrelevant and immaterial.

(By Mr. HILLYER:)

502 Q. How much did Mr. Eldredge pay in?

Mr. WILSON: I object to that also for the same reason, and for the reason that the affairs of the Real Estate Association are not involved in this pending litigation and have no relation to it whatever.

The WITNESS: I think Mr. Eldredge originally put in $5,000 and afterwards $2,000.

(By Mr. HILLYER:)

503 Q. Why did you charge Young commissions when you purchased property from him for the Real Estate Association?

A. Because we were entitled to it under our arrangements. When buying up property for the association we were entitled to get our brokerages and commissions.

889 504 Q. Do you understand that question? Will the stenographer please read it to the witness?

The stenographer read from his short-hand notes as follows:

"Why did you charge Young commissions when you purchased property from him for the association?"

The WITNESS: Mr. Young paid us our commissions, which we were entitled to, for selling property.

505 Q. Why did you charge him double commissions?

Mr. WILSON: I object to that question, because the affairs of Mr. Young with the firm of Kilbourn & Latta have nothing to do with this case and are wholly irrelevant to it.

Mr. HILLYER (to Mr. Wilson): I will have you get the objection down, and now I will add this to the question (addressing the witness): I understand from the testimony of Mr. Olmstead that 5 per cent. was charged upon Mr. Young.

A. That I do not remember anything about.

890 506 Q. Of course, if it was charged you know of no peculiar reason why it should have been charged?

A. No, sir.

Mr. WILSON: I object to that for the same reason as above.

(By Mr. HILLYER:)

507 Q. Did you consult any member of the Real Estate Association before making the sale of the square 156 to Sunderland and Hillyer; and, if so, whom?

Mr. WILSON: I object to that for the same reason as given above.

The WITNESS: I do not know that I consulted any one. I know that I told Governor Cooke about it, and I think Mr. Eldredge, because he was in the office nearly every day, and many of the others were in, and I told them. I saw them almost every day. If Eldredge was here at the time I told him I do not know.

(By Mr. HILLYER:)

508 Q. Governor Cooke is dead, is he not?

A. Yes, sir; Gover-or Cooke put in half the money in the Real Estate Association representing that.

509 Q. Did you ever tell Judge MacArthur before you made the sale that you contemplated making it?

A. I do not know.

891 Mr. WILSON: I object to that for the same reason.

The WITNESS: If he was in I saw him about it. He could have ascertained it very readily. The principal of these men who came in were Cooke & Eldridge.

(By Mr. HILLYER:)

510 Q. Did you ever tell Mr. P. M. B. Young about it?

Mr. WILSON: I object to that also for the same reason.

Mr. HILLYER: I am willing you should make this objecting generally, if you please, to every question. It will save the necessity of repeating the objection. I will stipulate that you shall have the right to object to any question I put at any time, on any ground.

Mr. WILSON: It is stipulated, then, by and between counsel for the complainants and counsel for the defendants that, for the purpose of saving time in the matter of taking testimony, each and every one of the questions and answers following shall be regarded as being objected to on all grounds excepting mere matters of form.

The WITNESS: I do not know whether Mr. Young was about here at that time. Whenever he was here he knew of the trans-
892 actions of the association.

(By Mr. HILLYER:)

511 Q. Have you any recollection of stating to Judge MacArthur or Mr. Young, before you made this sale, that you intended to make it?

A. I do not know that I did. I do not remember anything about it. It took two or three days of negotiation about the sale and they may not have been here.

512 Q. Did you tell Judge MacArthur of the fact that you had made this sale and the terms of the original purchase and the sale before you purchased his interest, in December, 1873?

A. I presume so. I do not remember anything about it. I do not remember any special conversation, but whenever these members came around they knew all about our office. Of course, I often saw them and they were informed of the situation.

513 Q. At what time did you purchase the interest of Mr. Young?

A. I cannot state the date, sir.

514 Q. It was after the purchase of Judge MacArthur's interest?

A. That is my recollection—after the purchase of Judge MacArthur's interest.

515 Q. Do you know whether you yourself said to Mr.
893 Young or whether from any other source he knew of the fact that you had made this purchase and sale of square 156 and the terms of the sale and purchase?

A. I remember nothing special about that. I can only make the same answer to that as to the previous question. When any of these gentlemen connected with the association came around the office they were informed about the situation of the association.

516 Q. Was it necessary for the firm of Kilbourn & Latta, in order to buy a piece of property for the association, to consult any member or any officer of that association?

A. It was not necessary at all.

517 Q. In order to sell a piece of property belonging to that association was it necessary?

A. Well, not according to the original agreement it was not, but it was left to our control and judgment. I think there was hardly any property bought or sold but what we used to consult Governor Cooke before the purchases — sale. There may have —

894 purchases and sales without his knowledge. I do not know. And Mr. Eldredge, when he was here, was in the office very nearly every day, and was familiar with the transactions and was talked with about them.

518 Q. Did the Real Estate Association, through Kilbourn & Latta, sell any other property than square 156 prior to May, 1872, or June, 1872, I will say?

A. I cannot say anything about the dates when they sold property.

519 Q. Would you not remember if they had?

A. I could not fix the date. I do not know what was the first piece of property. As I said the other day, I was under the impression that this square 156 was the first piece they sold. I do not know whether it was or not.

520 Q. How soon after that, so far as your recollection goes, did they sell another piece of property?

A. My recollection or impression is that it was some time.

521 Q. Was it before the 1st of January, 1874?

A. I will not undertake to say.

522 Q. I want your best judgment and recollection.

A. I cannot tell the year of any of these transactions un-

895 less you can give me some data to govern me, because it was eight or ten years ago. I cannot remember a year even.

523 Q. Have you any recollection now that the Real Estate Association sold any property other than square 156 prior to the purchase by Kilbourn & Latta of the interest of Judge MacArthur?

A. No, sir; from memory I cannot state whether they did or not.

524 Q. Between the date of the sale of square 156 to Sunderland & Hillyer and the 1st of January, 1874, did the Real Estate Association buy any property?

A. My impression is that they did.

525 Q. What property?

A. I cannot state definitely what property. I think the profit made out of the sale of square 156 went into the purchase of other property.

526 Q. For the Real Estate Association?

A. That is my recollection of it.

527 Q. Could you mention any piece of property that was bought through the firm of Kilbourn & Latta for the Real Estate Association after June, 1872?

A. I cannot state anything about it as far as dates are concerned.

896 528 Q. Can you mention any other property?

A. I know there was other property bought for them, but whether before or afterwards I will not attempt to say. In fact I did not remember when square 156 was bought until I was refreshed the other day.

529 Q. What price did you pay Judge MacArthur for his interest?

A. I think we gave him $5,000.

530 Q. That was exactly what he had put in there in 1871, was it not?

A. Yes, sir; when we bought him out. I do not know the date.

531 Q. What did you pay Mr. Young for his interest?

A. I think just what he put in—that is, I think he put up a note for his interest and we paid it back. I do not think he put in any more. That is my recollection of that transaction.

532 Q. Between the date of the first purchase by the Real Estate Association and the year 1874 had there been any loss made and realized upon any property bought by the association?

A. There had been a large shrinkage in values. I do not
897 remember what property was sold, but I know the real estate market was very much depressed in 1874.

533 Q. I am speaking of the 1st of January, 1874.

A. I know that after the crash of Jay Cooke & Co., some time, I think, in 1873, in the fall there were payments or something coming due; I do not remember what it was; we needed some money in this association and we applied to the members; I think some of them responded and some of them did not, but when we applied to Judge MacArthur I think he came around and offered to sell out his interest instead of putting in any more money. That is my recollection of that, and Mr. Young did the same.

534 Q. My question is, whether prior to the 1st of January, 1874, there had been any property previously purchased by the Real Estate Association which had been sold at a loss?

A. That I cannot say, and I cannot say what property, if any, was sold during the time you mention.

535 Q. Can you say there was a sale of any property by that association except square 156?

898 A. I do not remember the sale of any piece of property. I cannot say that there was. If you can call my attention to the purchase of any piece of property—I do not remember anything about these dates—I probably can remember, but I do not remember now about any property.

Mr. HILLYER: That is all.

Adjourned until Thursday next, 4 o'clock p. m.

WM. T. S. CURTIS, *Examiner.*

THURSDAY, *November* 2, 1882.

Met pursuant to adjournment.

Present: Messrs. Totten & Wilson, counsel for defendants, and Mr. Hillyer, of counsel for complainants.

Examination of HALLETT KILBOURN, a witness on behalf of the defendants, continued.

Redirect examination by Mr. WILSON:

536 Q. State more explicitly the origin and purpose of the Real Estate Association; state how it came into existence and what the objects of that association were.

899 A. I think originally it was a matter suggested by Mr. Huntington and myself in regard to investments in property in the northwestern portion of this city. I think Mr. Huntington suggested that he could raise a fund to be used in speculating in property in that section of the city, and suggested that Kilbourn & Latta—I presume he said Kilbourn but meant Kilbourn & Latta—could manage the matter, could buy and sell; and he said he thought there was a chance for some good speculation in view of the progress that this city would undoubtedly make in that direction.

537 Q. Pursuant to that suggestion parties were solicited to invest or put up money for the purpose of speculating in real estate in that quarter of the city. Is that so?

A. That is it, precisely. I think Mr. Huntington said he would confine with some parties and get parties to invest, which he did.

538 Q. That was the origin of it?

A. Yes, sir.

900 539 Q. And the purpose of it, then, was speculation in real estate; that was the sole object of it?

A. Yes, sir.

540 Q. Pursuant to that conception moneys were put up by different parties, as you have stated?

A. Yes, sir.

541 Q. Kilbourn & Latta were the brokers to manage the matter of buying and selling?

A. Yes, sir; Kilbourn & Latta were to have half the profits and their brokerage and commissions, of course.

542 Q. Now, this being a speculative matter or arrangement, when property was sold at a profit what was done with the proceeds of that property that was sold?

A. The proceeds were credited to the account of the Real Estate Association and rei-vested in other purchases for the association.

543 Q. Was any property sold at a loss?

A. I can remember one piece that we sold at a loss.

544 Q. And what was done so far as that loss was concerned?

901 A. That was charged up to the loss of or placed on the books against the association.

545 Q. Now, the proceeds of sales having been reinvested in real

estate as you say, at the time about which you have been inquired of, was there any money of the Real Estate Association on hand or was this money invested in property and represented by real estate?

A. The moneys were invested in real estate.

546 Q. After the panic of 1873 state whether or not there had been a depreciation in the value of property that had been bought.

A. There was a stagnation. You could not sell property at that time at any price particularly.

547 Q. What was the outlook at that time as to whether the Real Estate Association in this enterprise in which they were engaged would make a profit or incur a loss?

A. I think that act one time after that panic everybody connected with the Real Estate Association was demoralized and they
902 did not see any prospect of a profitable outcome.

548 Q. Were these notes outstanding for your deferred payments?

A. There were.

549 Q. Were those notes maturing?

A. They were.

550 Q. Was there a large or a small amount of notes outstanding?

A. There was a pretty large amount, my recollection is.

551 Q. What do you mean by a large amount?

A. A good many thousand of dollars.

552 Q. Do you mean by that $10,000, $20,000, or $50,000?

A. I cannot state the amount, but these investment- were made for speculative purposes and when property was bought by the association as small amount as could be gotten along with was paid down and obligations given for deferred payments.

553 Q. The purchases that were made absorbed all the ready money you had?

A. Yes, sir.

554 Q. So that the money that was put up was represented
903 by the small amount of purchases that were made and you had obligations outstanding for deferred payments?

A. Yes, sir.

555 Q. Did you call upon the members of the Real Estate Association for moneys to meet these obligations that were maturing?

A. We did in the fall after the panic.

556 Q. How many of them responded?

A. I think but two.

557 Q. Who were they?

A. Mr. Eldredge and General Belknap; possibly Mr. Parker; I do not know about that.

558 Q. As to those who did not respond, who furnished the money to meet the obligations that were maturing?

A. Kilbourn & Latta.

559 Q. When you called upon these members to furnish additional moneys to meet these maturing obligations did any of them especially desire to get out of the speculation; and, if so, upon what terms?

A. When Judge MacArthur was called upon he felt very
904 timid with regard to the outlook of matters. He was also, I think, at that time building his house upon the corner of M & Twelfth streets, and, in response to our notification that further funds were needed, came to the office and made a proposition to dispose of his interest without putting in any more money, and Kilbourn & Latta purchased that interest.

560 Q. And paid him his money for it?

A. Yes, sir.

561 Q. And that was satisfactory to him, as far as you know?

A. Entirely so.

562 Q. He was rather glad to get rid of it, was he not?

A. I think so.

563 Q. How was it with the others?

A. Mr. Eldredge and General Belknap, and perhaps Mr. Parker, put up money. I am not clear in my memory as to Parker. Of course the books will show that; but Mr. P. M. B. Young did not put up any more money. In fact, as I said before, he originally put up a note anyhow.

564 Q. He never put any money?

905 A. No, sir; and I think he assigned his interest to Kilbourn & Latta, and they paid the note.

565 Q. He was rather glad to get out of it, was he not?

A. Yes, sir.

566 Q. Do you recollect how it was with the others? Was it the same with them?

A. Jay Cooke & Co. did not put up any more, but Mr. Eldredge and General Belknap did, and perhaps Mr. Parker; I do not remember as to that. Of course that has all been shown by Mr. Olmstead's testimony, and the books will show it. It was all entered up in the books of the Real Estate Association by John Bull, their bookkeeper. Every entry was promptly made, I suppose.

567 Q. The long and short of this is that the moneys that were originally derived from sales of property were invested in real estate, and before this panic came, followed by this depression in the value of real estate, the whole of the assets of this Real Estate Association being real estate and thus depressed in value, these
906 parties preferred to take out this original investment and let Kilbourn & Latta take the loss?

A. That is it exactly.

568 Q. And that was done?

A. Yes, sir; and it was all entirely satisfactory to those gentlemen.

569 Q. Did you ever have any complaint from any of those gentlemen in regard to it?

A. I never have in my life.

570 Q. Did you ever hear of any complaint in regard to it from any of the others?

A. I never did.

571 Q. You have been asked in your cross-examination in regard to square 156. Now, state what was done with square 156, — far as the

Real Estate Association was concerned, when it was sold. To whom did you charge the property at its purchase and what did you do when you made the sale?

A. That has been fully explained and exhibited here by Mr. Olmstead, and I stated it substantially the other day. When property was purchased it was charged to the account of the Real
907 Estate Association, and when it was sold they were credited with the proceeds It is all duly and properly entered on the books. The profits arising from sales were invested in other real estate for the association.

Recross-examination by Mr. HILLYER:

573 Q. Have you any account in your books that represents the Real Estate Association?

A. I have no books.

574 Q. Was there any account of that kind in your books?

A. Yes, sir.

575 Q. In the name of the Real Estate Association?

A. Yes, sir; with the name of Hallett Kilbourn, trustee.

576 Q. State whether there was an account by the name of the Real Estate Association or whether it was an account by the name of Hallett Kilbourn, trustee.

A. My recollection is that it was an account by the name of "Real Estate Association."

By Mr. WILSON:

908 577 Q. Real Estate Association or Hallett Kilbourn, trustee?

A. Yes, sir; the same thing.

By Mr. HILLYER:

578 Q. Have you access now to that ledger account?

A. I have not possession of the books at all, and have not had since I left the firm, several years ago.

579 Q. This examination has taken place in the office of Mr. Olmstead?

A. Yes, sir.

580 Q. And Mr. Olmstead has the books?

A. Yes, sir; Mr. Olmstead has the books, and is present, and can speak for himself.

581 Q. What loss did the Real Estate Association incur prior to the 1st of January, 1874?

A. I can remember one piece of property that was sold at a loss.

582 Q. Where was that?

A. That was a lot we sold to General Grant, up at the junction of Vermont and Rhode Island avenue.

583 Q. How much was there of it?

A. It was quite a large lot, between 20,000 and 30,000 feet,
909 I should judge from memory.

584 Q. How much did the Real Estate Association pay for it?

A. That I cannot remember.

585 Q. About how much?

A. I will not undertake to state the figures.

586 Q. About how much did they sell it to General Grant for?

A. For less than what it cost.

587 Q. How much less?

A. That I will not undertake to state. The books will show the whole transaction. It was all — property entered at the time.

588 Q. Have you not access to the books now, so as to ascertain what the loss was on that piece of property?

A. I have no books at all. I left the firm after the panic, several years since.

589 Q. Will you state your best judgment as to how much the loss was upon that piece of ground?

A. I would not undertake to state, but I know it was a loss on that, I remember. There may have been other losses, but I remember that transaction.

910 590 Q. When was that sold to General Grant?

A. That was sold before the panic, but I do not know what year.

591 Q. Did property generally up to the time of October, 1873, rise or fall in value in the northwestern part of the city of Washington?

A. I think it appreciated in value up to the time of the panic.

592 Q. Why did you sell to General Grant at a loss?

A. Because it was understood, as one reason for selling at a loss, that General Grant was going to build there, and, of course, that would help the adjoining property and make it increase in value.

593 Q. There was no other property that was bought by the Real Estate Association sold at a loss before that time?

A. I will not undertake to state that.

594 Q. None that you know of?

A. None that I can remember.

595 Q. I think that you stated before that there was no other property that you could remember that the Real Estate Association sold before of any kind?

911 A. I could not state. I know we sold more property for the Real Estate Association, but, of course, it may not have been before the panic. When a particular piece of property was sold I will not pretend to state now, but I know that everything that was sold and everything that was purchased was duly and properly entered on the books.

596 Q. Entered in the name of Hallett Kilbourn, trustee?

A. The Real Estate Association or Hallett Kilbourn.

597 Q. You know which?

A. I think the Real Estate Association, as near as I can remember. The books will show that. It may have been the Real Estate Association, Hallett Kilbourn, trustee, both together; I do not know.

598 Q. You say that by agreement with the Real Estate Association the firm of Kilbourn & Latta were to have half the profits?

A. That was the original understanding between Mr. Huntington and myself.

912 599 Q. Who knew of it?

A. Mr. Huntington and myself.

600 Q. Did any of the other members know of it?

Mr. TOTTEN: I object to that question.

The WITNESS: I think Mr. Huntington explained that to members of the association. It was not carried out, and that was what I complained of afterwards. Mr. Huntington died in February or March, 1872.

Mr. TOTTEN: I object to that answer also.

(By Mr. HILLYER:)

601 Q. So far as you know, Mr. Huntington did explain the matter to the others?

Mr. TOTTEN: I object to that.

The WITNESS: Yes, sir; there is no doubt about that.

Mr. TOTTEN: I object to the answer likewise.

(By Mr. HILLYER:)

602 Q. Did you think the others understood it?

Mr. TOTTEN: I object to that question.

The WITNESS: I supposed they did. He spoke to the other
913 members and got several of them to put in money. They placed money in his hands without my having any conversation with the members.

Mr. TOTTEN: I also object to the answer.

(By Mr. HILLYER:)

603 Q. Did you yourself speak to any of the other members about the division of profits?

A. I think that I had a conversation with Mr. Eldredge about that.

604 Q. Did Mr. Eldredge understand that the firm of Kilbourn & Latta were to have half the profits that should be realized upon these real estate transactions?

A. I told — that was my understanding and the understanding of Mr. Huntington at the original inception of this proposed speculation; that we were to have our brokerage and commission, and then we were to have half the profits; that was the clear, expressed understanding between Mr. Huntington and myself in the original inception of this proposed speculation.

914 605 Q. Were there any members who had this understanding besides Mr. Huntington and Mr. Eldredge?

A. I do not remember now whether I had further talk about it. I may have made a complaint to them, as I did to Eldredge, that the original understanding was not carried out; something of that kind.

Re-redirect examination by Mr. WILSON:

606 Q. Before these parties put in their money did you ever have any talk with any one of them with reference to their putting in this money, or was that a matter that was worked up by Mr. Huntington as to two or three of them and by Mr. Olmstead as to two of them?

A. I certainly had no talk with any number of them about putting in any money except Mr. Hutington.

607 Q. Mr. Hutington devised this scheme?

A. Yes, sir.

608 Q. And got these parties to put their money into it?

A. Yes, sir; before I knew anything about it or had any talk with them. I did not know anything about it.

915 609 Q. Your dealings were with him?

A. They were.

610 Q. So far as making this arrangement was concerned?

A. They were, exclusively and entirely.

611 Q. And three of them paid their money to you, did they not?

A. Yes, sir.

612 Q. And Mr. Olmstead procured two others to do it?

A. I had forgotten about that. I remember now that Mr. Belknap put his in payments along.

613 Q. So far as Kilbourn & Latta is concerned, therefore, the substance of it is that their connection with this business originally was that these gentlemen put their money into a pool which was to be used by Kilbourn & Latta in the buying of real estate for speculation, and the profits were to be divided, Kilbourn & Latta taking one-half; was not that the whole of it?

A. That was it.

614 Q. When you made a sale you reinvested the proceeds, as you have before stated?

916 A. That is entirely correct.

Adjourned to meet on Monday, Nov. 6, at 4 o'clock, p. m.

WM. T. S. CURTIS, *Examineer.*

WASHINGTON, D. C., *Nov.* 22, '82.

Mr. HALLETT KILBOURN, being recalled for further examination, was cross-examined by Mr. Hillyer, as follows:

Q. Mr. Kilbourn, in the letter which has been introduced in evidence, and of which I show you a copy (handing copy to witness), written to yourself and Olmstead by Mr. Latta, May 26, 1872, this expression is used: "Pool Vermont Av. and circle (R. I. Ave.)". I wish you to state who you understood was designated by the term pool.

A. At this time it is impossible for me to say among our customers who was distinctly meant, but I am under the impression that it is meant for the Real Estate Association, but I cannot state

917 definitely at this date, considering the extensive business I then had to do.

Q. Was there any other association of persons with whom you had any business connection at that time that you have known to be designated by the name of "pool" except the Real Estate Association?

A. We were doing a very extensive business at that time and with a great many people. What party he intended that for I cannot state. He must answer that himself. My impression, though, would be that it was intended for the Real Estate Association.

Q. You have heard the Real Estate Association designated by the name "pool," have you not?

A. Yes, sir.

Q. Did you ever hear the designation "pool" applied to any other association of persons doing business with you?

A. Oh, yes; when several persons were combined, but this was one that had a notori-ty about it. They were all "pools" when several parties combined and purchased property or mining interests.

918 Q. Can you mention any other one that was designated as a pool?

A. I think Sunderland, Hillyer & Co. was called "pool." Kilbourn & Latta bought property with others, and that was called "pool."

Q. When you read that letter you supposed you understood what was meant by that term—who was designated by it?

A. Well, we transacted business for so many parties I do not propose to tell what Mr. Latta intended to mean, but my impression is that it referred to the Real Estate Association.

At this point an adj. was taken until to-morrow, Nov. 23d, '82, to meet at 10 a. m. at office of Shellabarger and Wilson.

HALLETT KILBOURN.

WM. T. S. CURTIS, *Examiner.*

H. K. No. 1. W. T. S. C.

919 Hallet Kilbourn. James M. Latta.

Office of Kilbourn & Latta, real estate and note brokers.

WASHINGTON, D. C., *November* 19, '73.

Thomas Sunderland, Esq., Bank of California, San Francisco.

D'R SIR: In the statement of the several amounts to be paid by Sunderland and Hillyer and yourself, sent to you on the 5th of Sept. ult., we omitted the payments falling due on squares 66 and 93. These amount to $1,551. Special taxes on lots in squares 195 & 92, amounting to $3,633.90, must be paid during this month or commence to draw 20 % interest. On account of the above, in addition to the payments reported by us on the 5th of Sept. ult., we have been compelled to draw for $5,000, and shall require in the early part of next month about $5,000 more to complete the payments of principal, interest, and taxes above named for the current

year. We enclose herewith statements of the special improvements and general sewer taxes on the properties of yourself and Sunderland and Hillyer, so far as the bills have been rendered up to this date.

920 They amount to $32,715 24
Less taxes on squares 195 & 92, as above $3,633 90

To be provided for $29,081 34

We can buy bonds with which these taxes can be paid so as to save you 20 % besides the interest at 10 %, which they (the taxes) will draw in thirty days after the rendition of the bills, which dates are shown in the enclosed statements. The saving on the amount of the bills now rendered will amount, at that rate, to $5,816.80, of which we deem it our duty to advise you and request your decision as to their payment. We also enclose blank forms of the bills, both for special improvements and general sewerage for your information.

Respectfully yours, KILBOURN AND LATTA.

H. K. No. 2. W. T. S. C.

WASHINGTON, D. C., *Sept.* 3, '73.

Thos. Sunderland, Esq., care Oriental Bank Corporation, London, England.

D'R SIR: Your letter of the 18 ult. from Interlaken, Switz, duly received. In reply thereto we enclose statement of ac. with
921 yourself, and also with Sunderland and Hillyer. We commenced the ac. submitted May 1st, the time of your departure, and bring it down to yesterday. By it you will see what we did with the $21,000, and also with $5,000 drawn for since. The date of receipt of cash and its application in detail is fully set forth. We also send statement of am't needed, drawing the remainer of this year. You will observe that a future of the money drawn from your bankers is placed to the credit of the ac. of Thos. Sunderland, and the remainder placed to your credit in the ac. of Sunderland and Hillyer. We trust an examination of the accounts will prove satisfactory. The item of general taxes can be reduced 7½ % if paid during this month, and 6¾ % if paid in October, and 6 % if paid in November; or the tax will remain as it is if not paid till June 30, '74. There has been no assessments for special taxes (for improvements) issued since your departure, but quite an amount will be issued within the next 30 days. By a law of the last Legislature the payment for special improvements was divided into five annual payments with 10 % interest attaching. This only applies to
922 assessments issued since the act was passed, and does not include the assessments issued previously, of which quite an amount is out against your property, issued last winter, which can be redeemed before the expiration of a year from their issue by paying ten % interest to date of redemption. We await your in-

structions as to payments of special taxes, as also the general taxes. The Board of Works have issued some $2,000,000 of 8 % certificates in payment for work done. The certificates run 1, 2, 3, 4, & 5 years and are receivable in payment for special taxes, year for year, and these 8 p. cts. are now selling for 85 to 90 cts. on the dollar, with probability of their soon reaching about 95. We can buy them to use in payment of your special taxes if you so instruct us. Real estate has been very quiet this summer, as the city has been deserted, but prices are firm, and it is difficult to pick up many bargains. Stewart's house is about completed outside and looms up like a castle. The British minister has contracted for building his, and they are at work with the hopes of getting it under roof this fall. Thos. Williams' (att'y gen'l) home is about completed. Shephard has covered the
923 entire square (where I am building) with brick houses. Thos. Derby bought the north half of the "Sisters" square (163), for 75 cts. p'r sq. ft., and the "Sisters" are going to build a large building on the Conn. Ave. front, 246 feet in length, and will improve the whole south half of their sq'r. The French minister has not bought Zadine's property. The Prussian minister has returned from Berlin and the newspapers report that his gov't has consented to the erection of a new residence here on their present *sight*; doubtful, but will know more about it in a few days. New Hampshire avenue is paved with wood from Circle on Penna. Ave. up to R St. P St. is being paved from Circle to 7th street; Q and R Sts. paved from 7th St. to New Hampshire avenue; 15 St., from Mass. Ave. to Boundary St., and 19 St., from Circle to Boundary; 20th & 21 streets are also being paved from Penn. Ave. to Boundary St., and it seems as if about every street is being improved. The whole section (and city for that matter) is being sewered and water and gas pipes laid. In short, the Board of Works and Gen'l Babcock are rapidly making Washington the handsomest city in America. It is understood that Senator Conkling is in with Ingersoll in
924 the purchase of sq'r 139. Hope it is true.

We consider real estate property better to-day than ever before.

Mr. Latta is en route home; due in New York next Tuesday. Hutchinson & wife sail for Europe to-morrow on Stm. Adriatic, to be absent 3 months. If this is not too large a dose for one letter write us and we will give you another supply.

With kind regards to all, we remain, truly yours,

KILBOURN & LATTA.

Met on this, the 8th day of March, 1882, pursuant to adjournment, and again adjourned until to-morrow, the 9th inst., to meet at the usual time and place.

Met pursuant to adjournment on this, the 9th day of March, 1882, at the office of Shellabarger and Wilson, at 8 o'clock p. m., for the purpose of examining Brainard A. Warner.

Present: Messrs. Hillyer & Ralston, for complainants; Mr.
925 Enoch Totten, for Mr. Latta.

Direct examination of Mr. B. H. Warner:

BRAINARD H. WARNER, being duly sworn, testified as follows:

By Mr. TOTTEN: What is your name and residence?

A. Brainard H. Warner; my residence is Washington, D. C.

1 Q. What is your occupation?

A. Real estate.

2 Q. How long have you been engaged in real estate?

A. Since 1869.

3 Q. Are you what is known as a real estate broker?

A. That is my understanding.

4 Q. Can you define for the benefit and information of the court what a real estate broker is in the city of Washington—what it has been in this city since 1869? I want to know what a real estate broker does.

A. Well, selling real estate, attending to the management of property; renting property forms a large part of the business.

926 5 Q. What is the *modus operandi* of conducting that business—of securing property for sale? Do you make a list of property for sale and keep a memoranda on your books, &c.?

A. Yes; all property that real estate agents obtain control of they keep a record of, advertise it, and make every exertion to sell it.

6 Q. To whom to you look usually for commissions?

A. Well, we look to the seller, unless there is a special agreement that the buyer shall pay it.

7 Q. Do not real estate brokers ever charge both buyer and seller commissions or look to both buyer and seller for commissions out of the same piece of property?

A. Not unless there is a- arrangement to divide the commissions.

8 Q. Then it requires the consent of all parties?

A. Yes.

9 Q. What was the nature of the real estate business during the year 1872 in the city of Washington as to activity?

A. Well, was that the year the Board of Public Works came in?

10 Q. Yes; in June 1871.

A. It was somewhat active—in fact, it was quite active,

927 owing to the improvements and proposed improvements by the Board of Public Works.

11 Q. How was the real estate business in the northwestern part of the city, compared with the other localities of city, as to the sales of real estate?

A. Well, there were a great many sales then, but they were made principally by one firm here. I sold very little property in that section at that time, being just a beginner in the business. It was mostly sold by one firm.

12 Q. What firm do you allude to?

A. Kilbourn and Latta or Kilbourn, Latta and Olmstead.

13 Q. Were you acquainted with the business of Kilbourn and Latta during the years 1871, 1872, 1873, 1874, 1875, & 1876?

A. Only by hearsay and what I read in the papers as to sales made by them.

14 Q. Well, you frequently met, then, didn't you?

A. I had very little to do with them.

15 Q. Did they, so far as you know, conduct a large or small business or an ordinary business?

928 A. Well, I suppose they conducted a large business.

16 Q. How did their business compare with other real estate firms of the city?

A. I suppose they were leading the business at that time.

17 Q. Have you ever had the care and management of real estate since the beginning of the improvement of this city?

A. Certainly.

18 Q. I allude now to the care of property, as to the assessments against it, as to the valuation of the board of assessors, the works of improvements about it, &c.

A. I never had special charge of any property that gave me supervision of the improvements except my own.

19 Q. You have a great deal of that?

A. I have some.

20 Q. Now, Mr. Warner, I want to put a question to you of a general character, and if you listen to it as I dictate it to the stenographer you can answer it afterwards. Suppose the owners of real estate in northwestern part of the city of Washington, which real estate was worth about $5,000.00 and which was practically improved, the title to which was in one of the firm of brokers

929 as trustee, and that such trustee had given his individual notes to the extent of many thousand of dollars—say from fifty to seventy-five or one hundred thousand—and that in the latter part of 1872 those owners went on a visit or tour to Europe, leaving the real estate and all matters connected with it to be carried on and managed by the firm of brokers of which the defendants were members, and that the said firm was obliged to carry along, or to be procured to be carried, dishonored promissory notes for large sums, for the payment of which those owners neglected to provide, contrary to and in violation of their agreement with the brokers, and that the credit of the firm was thereby seriously injured, and they were charged with the duty of guarding the property from depredation and injury during the progress of improvements of public streets during the latter part of 1872 and during 1873, 1874, 1875, and part of 1876, and to watch the assessments, both

930 general and special; to appear before the board of appeals for equalizing the valuation put upon this real estate, collect and apply assessments growing out of said property, and generally to do and perform such acts and exercise such care as might be necessary and proper for the protection of the property and the interest of the owners thereof, and that such brokers attended to the payment of taxes and generally to the exigencies of the property, and gave notes for the deferred payments of the real estate, and made regular reports to the owners of the condition of the property and the affairs of these owners and the amount of money that would be needed from time to time in and about said property and notes, and that the said brokers were not allowed or expected or able to

sell any of the property and thus realize commissions, and that there was no agreement touching the amount of compensation to be paid to these brokers for such services by the owners; suppose all
931 these things to be facts, what, in your judgment, would be a fair and reasonable sum per annum to be paid these brokers for those services?

Mr. HILLYER: I want to make an objection to that question. First, because it states, by way of hypothesis, as facts matters which have not appeared in evidence and which do not exist in this case; second, because the witness from his own testimony shows that he knows nothing about the subject which enables him to testify as an expert, for the reason that he has never had any business of a similar character to transact himself; and, third, because the evidence is irrelevant and immaterial.

A. The question you have asked involves a large amount of work and responsibility. Of course, the compensation would depend largely upon the amount of work performed, as well as the responsibility incurred.

21 Q. Well, what would be a fair compensation per annum for that service?

A. I was going on to explain at length. Such a case as
932 you have supposed is very unusual. I never heard of a case where a very large amount of property was placed in the hands of a broker to manage without his being expected or allowed to make sales so as to obtain commission, unless a special agreement was made as to the compensation he was to receive for the management of the property. Without any unusual responsibility I should say that a broker could afford to give all the time and attention that would be required to manage such an amount of property for one-half of one per cent. to one per cent. per annum, depending, of course, upon the amount of time occupied in attending to the business. The case you have cited supposes the incurring of great personal obligation and damage to credit, which is unusual, and for which I can make no estimate as to compensation.

22 Q. The responsibility occasioned by the fact that these
933 notes were signed by the firm or one of its members and that they had to be taken care of, having been dishonored would be a circumstance of a great deal of value in the estimation of a broker who was taking that matter into consideration, would it not? It would make the compensation more than if he had nothing to do than run about and take care of the property without any financial responsibility. Is that correct?

A. Of course.

23 Q. You know something about the property which was bought by Sunderland and Hillyer in the northwestern part of the city, don't you; have a general notion about it, haven't you?

A. I know some of the property.

24 Q. The care and management of property during the years I have mentioned was a great deal more laborious than ever before and probably will be again. Is not that true? I ask you this ques-

tion in reference to the matter of assessments, special assess-
934 ments, general assessments, drawbacks, and all those things.

Mr. HILLYER: I object to that question because it is leading.

Question re-read to witness.

A. Certainly.

25 Q. Mr. Warner, in your business in this city since 1869 you have been in the constant, if not almost daily, habit of paying taxes upon pieces of property, getting them together and compiling the history of taxation, have you not?

A. Yes, sir.

26 Q. You have also, in connection with your business, been in the habit of collecting rents for your customers to a large extent, have you not?

A. Certainly.

27 Q. And you are to this day?

A. Certainly.

28 Q. Are you a lawyer by profession?

A. I am a lawyer, but I do not follow the profession.

29 Q. You have been admitted to the Washington bar, and a member of that bar now, are you not?

A. I am.

935 30 Q. Where is your office located?

A. 916 "F" street northwest. I have no sign out as a lawyer, however.

31 Q. I mean your real estate office?

A. I know what you mean, but I simply made the statement because I did not care to take any of the credit belonging to the profession.

32 Q. Were Kilbourn, Latta & Olmstead regarded generally as skillful and intelligent men in their business?

A. When I commenced business they were the leading firm and stood well.

33 Q. They continued to be largely engaged in the business until they were dissolved, didn't they?

A. I do not know as to the latter part of their business career. Towards the latter part of their existence they did not appear to be doing a very extensive business.

34 Q. Do real estate brokers in this city frequently engage in real estate speculations as well as in buying and selling for others? I mean do they buy for themselves when they get a good chance?

936 A. When they have money they are generally willing to take a hand in an investing speculation.

35 Q. And most of them are engaged, more or less, in the business of investing the money of their customers?

A. That is a large part of the real estate business.

36 Q. Suppose that this long question which I asked you gives a reasonable actual picture of the services rendered by the firm of Kilbourn and Latta for these gentlemen, Sunderland and Hillyer, would $5.000 a year be too much, in your estimation, as a compensation for the services indicated by that question?

Mr. HILLYER: The question is objected to for the reasons stated in my objection to the leading question referred to.

A. I could not fix an accurate amount.

37 Q. Well, I want your general opinion about it—as to whether $5,000 a year would be a reasonable charge?

A. For how many years?

38 Q. Well, for five years or four years.

937 A. Of course, I cannot state how much the credit of these gentlemen was injured or how much service they performed. I cannot fix a figure.

39 Q. To take care of that property during those years with as much energy, industry, and prudence as a man of ordinary care and industry gives to his own property, it would take pretty much the time of one man to manage and watch that property, would it not?

A. It would depend upon how fast improvements were made around the property, the amount of taxes levied and rents collected, all of which enter into it. It must have taken a good deal of time.

40 Q. When you spoke of one-half of one per cent. to one per cent. you meant that percentage on the valuation of the real estate which was put upon it—a reasonable valuation—did you not?

A. You mentioned a valuation of $500,000. I spoke of a percentage on that.

41 Q. On the valuation of the property?

938 A. Yes, sir.

Cross-examination by Mr. HILLYER:

—. Do you know anything about what services the firm of Kilbourn & Latta performed for Sunderland and Hillyer from 1872 to 1876?

A. Of course not.

42 Q. Did you ever yourself have the care and management of property in the manner it is stated to you by Mr. Totten by way of a hypothesis?

A. No, sir.

43 Q. Did you ever make a charge in your books as broker for the care and management of property?

A. Well, I always charged for collecting rents.

44 Q. I understand in reference to collecting rents. You charged a commission, did you not?

A. Certainly.

45 Q. Did you ever charge in your books for the care and management of property?

A. No, sir; not under that specific head.

939 46 Q. Did you ever have anything paid to *to* you by anybody or ever charge anybody anything for such services as are mentioned by Mr. Totten in his hypothetical question?

A. Well, he mentioned a large variety of services. I have charged for a part of the services he then mentioned.

47 Q. What part did you ever charge for?

A. Well, I charged for carrying notes, for paying taxes, and I have probably charged for attending to some of the other matters.

48 Q. Can you mention any one person whom you have ever charged for such services?

A. I cannot now mention one. I generally got paid in some other way than by making specific charges.

49 Q. Do you think, if you were given time to look at your books, you could name some party whom you have charged for such services as these?

A. I might, but the charge would be of such a nature that it would not affect this case at all, in my judgment.

50 Q. You have never had anything of the kind to do for
940 anybody as suggested by Mr. Totten, have you?

A. No, sir.

51 Q. Do you know of any other brokers in town who have had it to do?

A. I do not.

52 Q. How, then, are you able to fix upon a percentage if you know nothing about the services they rendered or never had similar services to perform yourself?

A. I only gave my judgment in the matter as to the amount it was worth for rendering such services as were stated in Mr. Totten's question.

53 Q. Is that your judgment as a broker or as a man—that is, does it require any knowledge pecul-ar to the business of a broker to make such an estimate?

A. Well, I do not know that it does specially. I suppose, though, that a broker would be better acquainted with the matters of business involved than a man probably of a different pursuit.

54 Q. Suppose a man having property for sale left it in your hands as a broker to sell for him and that there was a mortgage on the property with deferred payments, and he furnished you
941 money to make those payments as they became due; would you charge him for making them or would you make the-without charge?

A. Well, I would make them without charge unless there was a great deal of extra trouble involved.

55 Q. Suppose he sent you money to pay taxes, and all you had to do was just to go to the assessor and find out what the tax was, or send somebody to do so, and when he stated the amount to pay him; would you charge for doing that, if you had the property in your hands for sale as a broker?

A. No, sir.

56 Q. What is there to do with an unimproved lot in any part of the city of Washington—on the northwestern part or any other part—for a broker or anybody else, in the way of taking care of it?

A. Well, I do not know that the lot would require very careful watching.

57 Q. Well, is there anything that you could mention that there would be to do about it?

942 A. I do not know of anything. Col. Totten's question

supposes the obtaining of reductions in assessments, &c. They were special matters that might and might not happen, and which would depend upon special circumstances.

58 Q. But you do not know whether any such circumstances existed in this case?

A. Nothing whatever. The question is purely hypothetical.

59 Q. Still you state the amount of service that should be rendered for one-half of one per cent. to one per cent. on the purchase price of the property. When you mentioned this amount did you mean it should be paid for exactly—what you supposed ought to be done by the broker to earn one-half of one per cent. to one per cent. in the absence of any agreement?

A. Well, Col. Totten's hypothetical question precluded a broker from any opportunity of making fees or commissions by way of sale, and indicated a very large amount of attention to be given and time consumed by getting revisions of taxes, reduction of taxes, drawbacks, and work that does not ordinarily fall to the lot of a
943 real estate man. Supposing so large an amount of time to have been given as he indicates, I say that one-half of one per cent. would be a reasonable charge, in my judgment.

60 Q. What do you suppose Col. Totten means by a large amount of time given?

A. Well, he indicates that the services would require nearly the time of one man.

61 Q. That is what you understand, then?

A. That is my understanding—that it would require a large amount of one man's time.

62 Q. Do you think that is worth $5,000 a year?

A. I do not say so.

63 Q. Well, do you think it is worth one-half of one per cent. to one per cent. on $500,000?

A. It would depend upon the services rendered.

64 Q. That you know nothing about?

A. I said I knew nothing about it.

65 Q. Then do you think yourself you have any right to make any estimate about percentage in this matter?

A. That is for other people to judge. I make my own esti-
944 mate, but other people must judge whether I have any special capacity for it.

66 Q. Do you think you have any basis for making an estimate upon the hypothesis stated by Col. Totten?

A. Well, I know that if a real estate man of good capacity ought to make $10,000 a year clear of his expenses I should think $2,500 is the minimum at which he could afford to give one-half his time, or nearly half his time.

67 Q. You understood the question of Col. Totten to suppose that a real estate man of good capacity was required—the whole or a large portion of his time—to the care and management of this property, didn't you?

A. To give a large portion of his time. That is how I understood his question.

68 Q. If that was not the fact, then there would be no basis for your estimate, would there?

A. If the services that Col. Totten mentioned were not rendered, of course my conclusion would be wrong and my estimate be without foundation as applied to this case.

945 Redirect by Mr. TOTTEN:

69 Q. You have acted, Mr. Warner, frequently as an appraiser of real estate in Washington, have you not?

A. I have acted several times; yes, sir.

70 Q. You know something about that business?

A. Oh, yes.

71 Q. Now, is it not true that a dealer in real estate or a real estate broker would be more capable of watching the welfare of a given piece of property than a man not a real estate owner or experienced in that business? Real estate brokers are constantly dealing with the District government in the matter of assessments and taxes, are they not?

A. They have been for some years back; yes.

72 Q. About how far back?

A. Well, since the existence of the Board of Public Works.

73 Q. Since the Board of Public Works begun their improvement of the city the business of paying taxes and attending to the taxation of property in every way has sprung up into almost a
946 business of itself by some men, hasn't it?

A. Yes, sir.

74 Q. Isn't it a fact a great many men are engaged in business here of paying taxes, reduction of assessments, &c.?

A. There have been a great many.

75 Q. That all sprung up since the Board of Public Works begun improving here?

A. Yes, sir.

76 Q. During the time those improvements were going on so rapidly in 1872, 1873, and 1874 isn't it true that vacant lots, about which there were pavements, for instance, and curbstones, needed constant watching in the vicinity of the improvements?

A. Well, they might have needed watching. You said pavements and what?

77 Q. And curbstones.

A. Oh, yes.

78 Q. Wasn't it a matter of common complaint that small contractors would take up the bricks of the pavements from one place and put them down at another, as well as carry off the curbstones?

A. I have heard such instances.

847 79 Q. Was it not a matter of frequent complaint?

A. I used to hear it spoken of.

80 Q. Then any man who had the care and management of this property during the years of 1872, 1873, and 1874 who did his duty would have to survey these unimproved pieces of property to see they were not depredated upon. Wouldn't that be part of his duty?

A. If the property had pavements and curbstones. I did not sup-

pose, from former questions, that that was the case. I thought it was entirely unimproved. Five thousand dollars would pay for a large amount of old curbing on pavements.

Recross by Mr. HILLYER:

81 Q. You stated, Mr. Warner, that it is the custom of real estate brokers, if I understood you, to deal themselves in real estate in the city of Washington. I wish to ask you if you think it would be proper for a real estate broker to be himself the purchaser of property which was in his hands for sale without disclosing to
948 the seller the fact that the broker was the purchaser?

A. Not if the seller relied on his advice.

Mr. HILLYER: The question will be re-read.

The question was re-read.

A. I might explain that more fully. Sometimes property is placed in the hands of a broker and the owner fixes a price himself. Of course it does not matter to him whether the broker buys it or any one else.

82 Q. In such a case as you supposed last would the broker charge commissions to the seller whether he was himself the purchaser or interested in the purchase?

A. He might very properly do it; I see no objection to that.

83 Q. Although he was himself the purchaser, you see no objection?

A. Although he himself was the purchaser. If he sold it to an outside party for the price fixed by the owner he would be entitled to the commission, and I do not see why he should not receive the same amount in case he himself became the purchaser.

84 Q. In such a case you would not consider, then, that
949 the broker was the agent for the seller, or would you so consider?

A. Well, I have stated before that when the seller relied upon the advice of the broker I did not consider that the broker ought to buy without a knowledge on the part of his principal of the facts.

85 Q. Well, precisely the case which I wish to put, which will draw the distinction, is this: When property is put in the hands of a broker *of* sale and the seller fixes a price which he is willing as minimum to take for the property and the broker ascertains that he can sell the property for a larger sum than that, do you consider that he has a right under those circumstances to become the purchaser of the property himself for the purpose of a resale without disclosing to the seller, while a larger price than the one he previously fixed as a minimum can be obtained?

A. Why, certainly not, if the seller relied at all upon the advice of the broker, as I suppose he would rely from the question,
950 as you state the price fixed was the minimum. Of course the seller expected the broker to obtain a larger price if he could.

86 Q. Is it a part of the business of a broker in Washington, or

was it, &c., in 1872, to purchase property on a commission, as well as to sell it, if so employed or if employed for that purpose?

A. Certainly.

87 Q. Have you ever, as a broker, purchased property upon commission?

A. I never was fortunate as to have many such opportunities. I have sometimes done it.

Q. What was the regular commission or brokerage in an ordinary transaction for the sale of real estate in 1872?

A. I think it was 5 per cent. on the first $2,000, 3 per cent. on the next $3,000, and 2½ per cent. on all above $5,000. That was a figure fixed by common custom.

By Mr. TOTTEN:

If an owner of real estate should put a piece of property in your hands and tell you his price for that was $10,000, and you found
951 out afterwards that you could sell that property, or got information which led you to believe that you could sell it for $12,000, would there be any objection in your becoming the buyer of that property for the *purchase* of selling it if you could buy it at $10,000 for the purpose of selling it $12,000, the man having fixed his own price?

A. Well, if the owner should fix $10,000 as his price and was willing to take that amount, and I knew of no special opportunity of obtaining a larger price, but was willing to take the chance of a rising market, the same as any outside purchaser, and had the money to invest, I see no objection to making the purchase myself, unless the owner was guided by my advice and supposed I was treating his property the same as my own.

88 Q. If an owner of real estate should put property into your hands for sale on the best terms you could get for him, and you should tell him that you would buy it yourself for the purpose of selling it to somebody else and he should agree to it, would there be any objection to it?

952 A. Why, of course not; he would know all the facts in the case then.

89 Q. How could a real estate owner bring a piece of property to a broker for sale and that broker buy from the customer without his knowing it, provided the owner made the conveyance to him? Could not do it, could he?

A. Well, he could substantially do it by having a deed to a third person.

90 Q. We could not do it, however, if the deed was made to the broker himself?

A. Not unless he represented it was in trust for other parties.

91 Q. It is an unusual thing for brokers in Washington to obtain commissions from purchasers of real estate through them, is it not?

A. Certainly.

92 Q. Real estate brokers rely on sellers for commission?

A. As a rule.

93 Q. When a person presents himself at a broker's office you are willing for him to buy—is that correct?

A. Yes, sir.

94 Q. Rather glad to see a purchaser come in?

A. Generally willing to receive him.

953 95 Q. There are always plenty of sellers and rarely plenty of purchasers—is that not so?

A. When the market has fallen that is the case.

96 Q. Is that so now?

A. Not so much as it was.

97 Q. The sellers are more abundant than the purchasers, ain't they?

A. Well, sellers are stiff in their prices, but the purchasers are becoming somewhat numerous now.

BAINARD W. WARNER.

An adjournment was here taken — further notice. The further taking of testimony in this cause will be continued.

WM. T. S. CURTIS, *Examiner.*

WASHINGTON, D. C., *Oct.* 17, 1882.

SAMUEL CROSS, a witness on behalf of the defendants, being duly sworn, testified as follows:

By Mr. TOTTEN:

1 Q. What business have you been engaged in for the last ten or fifteen years?

954 A. I have been in the brokerage business and insurance business.

2 Q. Have you had any experience in buying and selling real estate in the city of Washington?

A. Yes, sir; I have done some.

3 Q. Were you engaged in the business in the city of Washington?

A. Yes sir.

4 Q. Were you here during the administration of the Board of Public Works during 1871, 1872?

A. Yes, sir.

5 Q. Do you know the defendants Kilbourn, Latta, and Olmstead?

A. Yes, sir.

6 Q. How long have you known them?

A. I have known them ever since they have been in the city. That was about 1869 or 1870. I think our acquaintance commenced about 1869.

7 Q. What business were they engaged in?

A. The real estate business.

8 Q. Did you know them when they were on Seventh street?

A. Yes, sir.

9 Q. When they moved to the corner of Fifteenth and G street?

A. Yes, sir.

955 10 Q. And when they came into these building-?

A. Yes, sir.

11 Q. What was the character of the business they did from 1876, as to its extent? Did they do a large business?

A. I always thought they did the largest real estate business of any firm in town.

12 Q. Do you know anything about the property in the northwestern part of the city during 1871, '72, '73, and '74?

A. Yes, sir.

13 Q. What was the character of the members of this firm in 1869 to 1876 as to activity and capacity to do business as real estate men?

A. I considered it very good.

14 Q. What was the condition of the real estate in the northwestern part of the city in 1869 and 1870?

A. The most of it was under cultivation some time after that.

15 Q. Wasn't — generally unimproved or improved property?

A. Unimproved.

16 Q. It is a very important part of the city now, is it not?

956 A. Yes, sir.

17 Q. In fact, it is the best part of the city now for residence?

A. Yes, sir.

18 Q. Who gave that real estate there in that quarter a start?

A. I think the principal move in that direction was made by the firm of Kilbourn & Latta.

19 Q. About when did they begin up there? Do you remember?

A. That was, I think, about 1870—along there.

20 Q. Could you give a comparative statement as to the value of property up there then and now?

A. The property up there in that direction—do you mean about 1870?

21 Q. Yes, sir; 1871 and 1872.

A. It could be bought for a very low figure. I recollect of old Dr. Blake undertaking to sell a lot and withdrawing it, some time in 1869 or 1870, because he could not get twelve cents a foot for it. I guess that was about 1869. In fact, the whole place up there then was unimproved—nothing doing—all cheap.

957 22 Q. What is the value of property up there now? Are there desirable lots on Connecticut avenue, for instance?

A. I have heard recently of land selling all the way from two to three dollars per foot.

23 Q. What could such lots as those be bought for in 1871 and '72?

A. The same land?

24 Q. The same land in the sections that is selling now between $2.50 and $3.00 a foot could have been bought then for from eight to twelve cents per foot.

25 Q. Have the streets been improved generally in that quarter of the city?

A. Yes, sir.

26 Q. When did the improvements begin up there?

A. The Board of Public Works commenced in 1870.

27 Q. June, 1871?

A. They commenced improving portions of the streets in that direction at that time.

28 Q. The principal improvements were begun by the board, were they?

A. Yes, sir.

958 29 Q. How long did Kilbourn & Latta and Olmstead continue to deal in that particular quarter of the city?

A. I think their principal operations have always been there, in that direction.

30 Q. Do you remember when the financial panic came upon the city?

A. In 1873.

31 Q. What was the state of the market after Jay Cooke & Co. failed in 1873—I mean the real estate market?

A. Very flat.

32 Q. How long did it continue flat?

A. You might say it was only within the last two years it has commenced to make a start again.

33 Q. Do you know whether the firm of Kilbourn & Latta took an active part in real estate matters after the panic?

A. Yes, sir; I think really by the action of Kilbourn and Mr. Olmstead that other property was kept up at a good figure all the time; it was through their exertion.

34 Q. Do you know the nature of their exertions—what they did?

959 A. Yes, sir; they held up their own property and they talked up the balance of it all the time.

35 Q. Were they good talkers?

A. Yes, sir; pretty good.

36 Q. Do you know whether they ever wrote anything in the way of bulletins and the like?

A. I cannot state positively in relation to that. I have seen quite a number of articles which I had attributed to Mr. Kilbourn. I never knew positively that he wrote them. I could not give that as testimony; but I suppose he did.

37 Q. Is it not *time*, to your knowledge, that these gentlemen were persistent workers to keep up the price of real estate in this quarter of the city?

A. Yes, sir; they did that all the time.

38 Q. They did not do much for a long time but look after real estate?

A. In that corner I don't know that Mr. Kilbourn and Mr. Olmstead had anything particularly to do except their real estate business.

39 Q. Were there particular sales up in that quarter of the city in consequence of defaults or anything like that?

960 A. During what period?

40 Q. After 1873 to 1875.

A. Yes, sir; I had some occasion to buy some property or take some property that in 1871 or 1872 we loaned $20,000 on—what was known as the Dorsey house, in the Shepherd block, on Connecticut

avenue. At the time we supposed it was good security, as it was really estimated at $40,000. To make a settlement with Shepherd afterwards we took the property at $27,000.

41 Q. Were improvements going on all the time along Connecticut avenue?

A. Yes, sir.

42 Q. Do you know whether there were any difficulties about the preservation and protection of property during the operations of the Board of Public Works in that quarter by the cutting down of streets or raising up of streets?

A. Do I know that such was the case?

43 Q. Yes, sir.

A. I do.

961 44 Q. What was the character of the improvements made by the Board of Public Works through that quarter of the city, assuming the period of time to be from June, 1871, to June, 1874; did they pave the streets?

A. Yes, sir.

45 Q. Set curbstone and lay pavements?

A. Yes, sir.

46 Q. Cut down streets?

A. Yes, sir.

47 Q. The scheme, apparently, was to make a uniform grade of the streets?

A. I suppose that was the idea.

48 Q. Do you know the location of squares 115, 156, 158, 195, generally speaking? I don't want you to describe them.

A. Yes, sir.

49 Q. Do you know whether during the work conducted by the Board of Public Works it happened frequently that depredations were made upon property in that quarter of the city?

A. Of what nature?

50 Q. For instance, carrying off old pavements, curbstones, and the like.

A. I do not know.

51 Q. Did you have any property up in that part of the city?

A. Did I have?

962 52 Q. Yes, sir.

A. Personally I had not. I made loans on property in the Shepherd square and around that particular section.

53 Q. Shepherd square is between L and K streets, Connecticut avenue and 17th?

A. Yes, sir.

54 Q. These other squares of which I have spoken to you are farther up?

A. Yes, sir; frather northwest.

55 Q. Was there any difficulty with property owners touching the assessments for special taxes and general taxes during 1872, '73, '74, '75, and '76? What was the nature of the duties which an owner of property had on his hands to take care of his property?

A. It was considerable to do it.

56 Q. What, for instance?

A. Well, in what nature would you ask that?

57 Q. To see that the Board of Public Works did not overassess him—overtax him for special improvements.

A. That was the main fight by the citizens of the District.

963 58 Q. Was there a fight going on between the citizens of the District and the board?

A. Continuously.

59 Q. Did it require the attention of the owners of large tracts of property pretty generally?

A. Yes, sir.

60 Q. Have you had any experience under this statute authorizing the commissioners to equalize taxes, drawbacks, &c.?

A. I cannot state that I have done much of that.

61 Q. Have you ever engaged, either for yourself or your customers, in the payment of taxes and getting the reduction of taxes, &c.?

A. Not to a great extent. I have for the American Life, principally.

62 Q. Did you invest money for the American Life here?

A. Yes, sir.

63 Q. A good deal of money?

A. Yes, sir.

64 Q. How much from 1875 to 1876? I only want a general idea whether it was $50,000 or $100,000.

A. Six hundred thousand dollars; $225,000 I invested in one year, I think.

965 65 Q. Do you know whether or not the subject-matter of over-assessments and overcharges—over-assessments for general taxes and over-taxes for special improvements—was a constant source of discontent among the people of this city?

A. I do.

66 Q. Has there been any legislation upon that subject?

A. Yes, sir.

67 Q. Were there any complaints that you know of made to Congress and to the office representing the government of the District?

A. Yes, sir.

68 Q. Many?

A. Oh, yes.

69 Q. Those subjects gave rise to innumerable suits in court here?

A. Yes, sir.

70 Q. The owner of real estate during that period was required to give a good deal of attention to his property in order to prevent himself from being seriously injured, was he not?

A. Yes, sir.

71 Q. Now, suppose the gentlemen of the experience and ability of Kilbourn, Latta & Olmstead were left in charge of property in the northwestern part of the city for three or four years, and

965 during that period the value of property was from five to

six hundred thousand dollars, consisting of 150 or 200 lots of ground in different parts of the northwestern part of the city, and the owners of the property gave no attention to it, but left the matter in the care and custody of those gentlemen; I want to know what would be a reasonable compensation, in your judgment, for such services at such a time, to look after details of these general assessments, details of special improvement taxes, charges, and the proper care of the property, such as the owner of property diligent in his own interest would give to them. What would it be worth a year, in a round sum? Suppose, furthermore, there were incumbrances on this property amounting to large sums of money, deferred notes secured thereby, interest to be paid, notes to be looked after at maturity, and that kind of business, running from the middle of 1872 up to 1876. Now, that is as definite an idea as I can give you on that subject. I want you to give me a

966 reasonable estimate of the value of such services per annum.

A. I really think the attention given by those parties would be well worth from four to five thousand dollars a year—probably more. It was a pretty tough time to attend to property and look after the notes at that season, I know.

72 Q. How was the money market in the latter part of 1873, '74, and '75, in the way of securing loans?

A. It was rather hard to get money during those years.

73 Q. Is it an easy matter to look after the payment of notes, getting releases for incumbrances, paying taxes, getting your accounts correct? Is it a kind of business that anybody can attend to or does it require skill?

A. I think it requires some skill.

74 Q. It requires a good deal of skill, does it not?

A. Yes, sir.

75 Q. You have had a great deal of experience about it, have you not?

A. I was in that business.

967 76 Q. It requires some labor, does it not?

A. Yes, sir; if you make a loan of a thousand dollars there is always something turning up to cause you four or five hours to get it through.

76½ Q. What are the things that turn up?

A. Looking after the taxes. There is a lot of minutiæ that requires your time and attention.

77 Q. Do you often encounter difficulties in the examination of titles in this city—any imperfections in the title?

A. Oh, yes, sir.

78 Q. It frequently happens that you have to send abroad to other cities for quitclaim deeds to the land and have to make journeys?

A. Yes, sir.

79 Q. That is the part of the business of loaning money, is it not?

A. Yes, sir.

80 Q. Now, suppose for the services which I have indicated that

another fact exists—suppose that some of these notes, amounting to $100,000 say, were made by these persons in lieu of
968 the real parties in interest and these notes were dishonored, would that add anything, in your judgment, to the value of carrying such property?

A. Oh, yes, sir.

81 Q. Suppose there was $125,000 of these notes for the property that I tell you about given by Mr. Latta individually for the purchasers of this property and the credit of the firm were involved in the payment of these notes, in this question of the care and mangement how much, in your judgment, would that increase the value of the service per annum?

A. For $100,000?

82 Q. Yes, sir; falling due from time to time; some of them paid at maturity and some of them not.

A. That is according to what that firm did in relation to it; if they paid it or otherwise.

83 Q. Well, assuming that they had to take care of the notes and see that they were not brought to suit, or that the property was not sold in consequence of those notes?

A. I should think they ought to be paid for their services.

969 84 Q. How much per annum, those notes coming in from time to time during every year?

A. I should think that it was worth $100 to $1,500 a year for a man to look after such transactions during that time.

85 Q. You were pretty familiar during the years 1872, '73, '74, '75, and '76 with the standing of business men and real estate owners in this city?

A. Yes, sir.

86 Q. What was the general impression, if you know, as to whom owned this property in the northwestern part of the city—a large part of it?

—. It was generally supposed it was owned principally by Latta and others connected with him.

87 Q. Do you know whether they actually got into any descredit about that real estate or not? Were there any suspicions excited among the people in consequence of that load of real estate?

A. Oh, yes, sir.

88 Q. Were those suspicions against Kilbourn & Latta as to their financial standing?

970 A. Yes, sir.

89 Q. Were there any rumors that you heard about Kilbourn & Latta's firm?

A. Yes, sir.

90 Q. What were they? When did you hear them?

A. After the panic.

91 Q. What were the rumors?

A. The rumors were that they were pretty well depressed.

92 Q. It was published in the newspapers at the time that they failed?

A. I could not give that as testimony; but it appears to me that something like that did occur.

93 Q. Do you know what those suspicions resulted from?

A. I suppose they were carrying too much real estate.

94 Q. It was understood they were carrying a very heavy load of real estate, was it not?

A. Yes, sir.

95 Q. You know something about the troubles and embarrassments that they had. What would you consider it would be worth per annum for a firm of that kind to go through those difficulties, the embarrassments on some other man's account?

971 What would it be worth for a firm of that kind to sweat under another man's load? Would it be worth anything?

A. Yes, sir; I suppose so; I would not like to be in that situation, I am sure. I do not know that any money value could really fix that up for me, if I were compelled to do it.

96 Q. If you had done it what do you think would be a reasonable compensation?

A. That is a question I would like to study up if I had to carry it.

97 Q. Could you not give us an estimate of what it would be worth under the circumstances of this case as I have detailed them to you?

A. I do not know that I could come down to a money value?

98 Q. Taking all these services that I have indicated, would you consider the sum of $5,000 per annum a reasonable or unreasonable charge for such services?

A. I should think it reasonable.

99 Q. It would be a low charge, would it not?

A. I should think it would be a very fair charge.

972 SAMUEL CROSS.

Cross-examination by Mr. HILLYER:

100 Q. Are you a real estate broker?

A. I think for four or five years I had a real estate office.

101 Q. Were you not a real estate broker in 1872 and 1873?

A. Yes, sir.

102 Q. You were a real estate broker in those years?

A. I was in that business then, but the principal part of my business was loaning money; more particularly that than selling.

103 Q. Did you ever make a charge against anybody for the care and management of property?

A. I never had particularly any property to carry; only the business for the American Life Insurance Company.

—. Whether you ever made a charge against anybody for the care and management of property. The question is a direct one.

A. Yes, sir.

105 Q. State whose it was, and the circumstances, and what it was.

973 A. I have had the management of the property that we had purchased for the American Life several years ago.

106 Q. State what your management consists in.

A. My management for these people is principally in collecting rents, and my charges were in accordance with that.

107 Q. You charge a commission on the collection of rents?

A. Yes, sir.

Q. I am asking you whether you ever made a charge for care and management of property?

A. No, sir.

108 Q. Did you ever know anybody else who did?

A. I don't know that I personally have known anybody that had any particular management of property in this town but Kilbourn and Olmstead.

109 Q. Do you know anything about the care and management given by Kilbourn & Latta to the property of Sunderland & Hillyer or Sunderland?

A. I do not, personally. I have learned latterly that it was you they were managing it for.

974 110 Q. Do you know anything about their managing it for anybody, independently of whom it was managed for? I mean by that do you know what they did?

A. I knew that they had the general management of a large—I might say numbers of lots of ground for certain parties in Washington, but I don't know whom it was for.

111 Q. The question is, Do you know what they did, by way of care and management, in respect to this property or any of it?

A. No, sir; I cannot say that I did, personally.

112 Q. Your answer-, then, in fixing amounts which you have undertaken to fix as compensation for services, are based entirely upon a hypothetical question?

A. Yes, sir.

113 Q. If a broker of real estate has in his hands for sale—I will suppose you yourself are a broker and you had property in your hands for sale—should be asked by the owner to pay the taxes on that property when they became due, the owner furnishing
975 the money to do it with, would you or would it be the custom for any respectable broker to mke a charge for doing that?

A. Well, ordinarily, I do not think I should—small business. I do not think I should charge without it was done to a great extent or I had considerable of it to attend to.

114 Q. Would it make any difference with regard to the amount of property which was in the hands of yourself or the supposed brokers for sale, with regard to the prop-erty of making a charge for paying the tax upon it?

A. No, sir.

115 Q. If there were deferred payments upon the property in the hands of the broker for sale, evidenced by notes secured by deeds of trust upon the property, and at the time when interest or principal became due upon those notes the owner should furnish to the broker the money necessary to make the payment, the broker having the property in his hands for sale, would you yourself or, in your judgment, would it be in accordance with the practice of respect-

976 able brokers to make a charge against the owner's property for making the payments?

A. No, sir.

116 Q. You have stated that from October, 1873, until 1876, under the influence of the panic, it was difficult to procure money for the payment of obligations incurred before that period. I now wish to suppose that you, being a broker in this town during these years, having a large amount of property in your hands for sale upon which there were deferred payments and having promptly furnished to you upon all that property the money necessary to meet the occurring interest and the principal falling *in*, and also, in addition to that, a balance of money in your hand belonging to the owner of the property, unexpended—upon that hypothesis I shall ask you whether or not that is an advantage or would have been an advantage or disadvantage to your business as a broker.

A. Well, I do not know that it could have been a disadvantage to me to have held moneys to make payments.

117 Q. During those years would it not have been a decided
977 advantage to any firm or brokers to have had in their hands a balance of unexpended money and to be able to meet at maturity all the obligations of the property in their hands for sale?

A. I should think so if I had it.

118 Q. Would you think of making a charge for that—for paying out money under those circumstances?

A. No, sir.

Redirect examination by Mr. TOTTEN:

119 Q. What was the rate of commissions prevailing in 1873–1875 in making loans?

A. I got two and a half per cent.

120 Q. You have a general notion of the extent of the property left in the custody of the firm of Kilbourn & Latta. How much of one man's time would it have taken to attend to the wants of that property in a diligent manner? Would it have taken more than one man's time?

A. I want to know the nature——

121 Q. In all the relations that I have stated in my direct
978 examination—looking after the taxes, looking after the improvements, the payment of interest on notes, and such like.

A. It would have taken one man's time for that particular purpose.

122 Q. And if you were in a firm of brokers and a large quantity of property were left with you to take care of you would probably charge for it, would you not?

A. Yes, sir; if I had to take care of it.

123 Q. If you had to take care of it and it consumed your time you would have charged?

A. Yes, sir.

124 Q. If a broker takes a particular piece of property to sell it is not usual to make a charge for taking care of it because he does not care for it, does he?

A. No, sir.

125 Q. If a broker has 200 or 250 pieces of property left in his hands without any specific orders or permission to sell he would probably charge for the care and management of it?

A. Yes, sir.

979 Recross-examination by Mr. HILLYER:

126 Q. What do you mean by "being left in his hands?"

A. I suppose he means that this man has the control and management of it—taking care of it entirely; that it what I would take his question to be.

127 Q. What care and management was to be taken of an unimproved piece of real estate in the northwestern part of this city after the purchase was perfected and the title and all that and it was merely held for sale?

A. Held for sale by a broker and authorized to be sold by him?

128 Q. Yes, sir.

A. I don't know that there is any particular charge to be made under that state of facts.

129 Q. I am asking what the care and management would consist of in regard to such a piece of property?

A. I cannot state that there is any particular care and management in that.

130 Q. You can think of nothing for which a man would charge?

980 A. In that relation?

131 Q. In that respect—in respect to the care and management of it.

A. Nothing particularly.

Redirect examination by Mr. WILSON:

132 Q. Suppose that piece of property was in the name of a broker; suppose the broker's note was out for deferred payment; suppose there were taxes to pay and special improvements being made around the property, in reference to which assessments were being made, and suppose that there was really no market for the property, excepting at a loss to the real owner, and could not be sold, excepting at a loss; and suppose that owner should go off to Europe or California and stay away for four or five years, never coming back to inquire about the property at all, but leaving it all the time in the hands of the broker; and suppose the broker does not

981 sell the property at all, but after awhile there comes a change in the prices of real estate, when the property can be sold to advantage; it is put in the hands of somebody else to sell—in what would the care and management consist that the broker would have during that period of four or five years when there was no market for the property? Would the property take care of itself in all these respects, or would it require a broker to be giving it attention; and, if it would require attention, what would the attention be that it would require? Now, here are these taxes, these special improvements, these deferred payments, the parties' own paper; what would

the broker have to do to take care of the property under such circumstances? The owner himself is away and giving it no attention.

A. You mean it is left for his care and attention?

133 Q. Yes, sir.

A. He has got considerable to do to look after taxes—following it up—and during those years he had quite a lot to fight with the board and with the authorities in having the assessments reduced, &c., and it required considerable attention.

982

134 Q. So it would not do for a man who is acting as an agent for another under those circumstances just simply to let that property lie there?

A. I should not think so.

135 Q. And if he discharged his duty towards his principal he would have to do a good deal of work, would he not?

A. Yes, sir.

SAM. CROSS.

DISTRICT OF COLUMBIA, *ss:*

I, Wm. T. S. Curtis, a notary public and duly appointed examiner in the foregoing case of Thomas Sunderland and Curtis J. Hillyer *vs.* Kilbourn, Latta and Olmstead, do hereby certify that I, as examiner as aforesaid, did cause to appear before me, at the times and places therein specified, Hallet Kilbourn, Sam'l Cross,

983

and Brainard H. Warner as witnesses on behalf of defendants, and in the presence of counsel for the respective parties I did then and there examine them upon their solemn oaths, they first being duly sworn to testify the truth, the whole truth, and nothing but the truth relative to said cause; that the questions and answers were taken down in my presence stenographically and then reduced to writing, and after having been carefully read over by said witnesses, respectively, were by them, respectively, in my presence, signed by them.

I further certify that I am not of counsel for any of the respective parties, nor am I in any manner interested in the result of said controversy, nor am I in any degree related to any of them.

My fee for taking this testimony and that of J. F. Olmstead for defendants is $363.00, which was paid by defendants and is just and reasonable.

WM. T. S. CURTIS, *Examiner.*

984

In the Circuit Court of the United States for the District of Indiana.

THOMAS SUNDERLAND and C. J. HILLYER

vs.

JAMES M. LATTA.

Deposition of John F. Olmstead, on behalf of defendant, upon the 21st day of January, 1882.

Present: J. H. Ralston, for complainants; Shellabarger & Wilson, for defendant.

JOHN F. OLMSTEAD, being duly sworn, testifies as follows:

By Mr. WILSON:

1 Q. Please state your name, age, and place of residence.

A. John F. Olmstead; am about 40 years of age, and reside in Washington, D. C.

2 Q. This is a suit of Thomas Sunderland and Curtis J. Hillyer against James M. Latta, and in the bill it is alleged, among other things, that Mr. Latta, the defendant, was a member of the firm of Kilbourn and Latta, composed of Hallet Kilbourn, James M. Latta, and John F. Olmstead. Are you the John F. Olmstead referred to?

A. I am.

985 3 Q. That firm existed, did it not, in 1872?

A. It did.

4 Q. And continued how long?

A. From January 1st, 1871, to December 31, 1876.

5 Q. What was the business of that firm, stating it in a general way?

A. Buying and selling real estate on its own account, on brokerage account, and loaning money.

6 Q. Do you know the complainants, Thomas Sunderland and Curtis J. Hillyer?

A. I do.

7 Q. How long have you known them?

A. Well, I have known Mr. Hillyer since 1871, I think, and Mr. Sunderland since 1872.

8 Q. Did the firm of Kilbourn and Latta have any relations with them of a business character, and, if so, when and to what extent?

A. Well, in 1871, I think it was, we sold three squares of ground, squares 66, 93, and 113, to C. J. Hillyer and William M. Stewart—Senator Stewart.

9 Q. Was this property located in the city of Washington?

A. Yes, sir; in the northwestern part of the city. In the spring of 1872, I think it was, Mr. Sunderland came here, and

986 from that time on to May or June we sold them a very large amount of real estate—between five and six hundred thousand dollars' worth.

10 Q. Does this amount you have mentioned—between five and six hundred thousand dollars' worth—include the three squares you stated that were sold to Hillyer and Stewart?

A. Yes, sir; and what was sold to Thomas Sunderland on his individual account. They had three accounts, but subsequently only two accounts. Thomas Sunderland bought individually; Sunderland, Hillyer, and Stewart bought collectively, and Hillyer and Stewart had bought these three squares. There were, therefore, three accounts.

11 Q. The aggregate of which amounted to between five and six hundred thousand dollars' worth of real estate?

A. Yes, sir; as near as I can recollect.

12 Q. In the transaction of this business was there any special agreement between Sunderland and Hillyer and the firm of Kil-

bourn & Latta as to the terms upon which Kilbourn & Latta should act in that matter?

987 A. There was not. They were, as far as we were concerned, the same as any other speculators or customers on the market, and at that time there were a great many.

13 Q. What was the extent of the business of the firm of Kilbourn & Latta at that period?

A. Well, I do not remember now.

14 Q. I do not mean in dollars and cents. I want to know whether the extent of its business was large or not.

A. It was considerably over two millions of dollars a year.

15 Q. In the bill of the complainants in this case they make the following allegation: Your orators and said Stewart, in said month of April, 1872, engaged and employed as their agents a certain firm of real estate brokers, then doing business as partners in said city of Washington, under the firm name and style of Kilbourn & Latta, and composed of the defendant-, James M. Latta and Hallett Kilbourn and J. F. Olmstead; and it was then and there agreed between the said firm, on the one part, and your orators and the said Stewart, on the other part, as follows: That your orators and the said Stewart should

988 entrust unto said firm, as their agents aforesaid, the negotiation for and the purchase of such real estate in the said quarter of the said city as your orators and the said Stewart might elect to require; that they should furnish unto the said firm, when by the same thereunto required, such sums of money as might be requisite for the acquisition of the property, and that your orators and the said Stewart should pay unto the said firm on their account a reasonable compensation by way of commission, when and in case the said firm should make no charge by way of commission against the vendors of the property; but in case any such charge should be made by the said firm against the vendors, that then your orators and the said Stewart should pay into the said firm no commission whatever; that the said firm, in consideration of so being entrusted with the purchase of such real estate and of the commissions which it might derive upon such purchase, should ascertain and point out unto your orators and the said Stewart such lots and par-

989 cels of land in the said section of the said city as in the judgment of the said firm might be most advantageously acquired by your orators and the said Stewart; that the said firm should advise and counsel, to the best of its judgment, knowledge, and experience, your orators and the said Stewart in respect of the purchase of any particular parcel of land within the said section which they on their own motion might suggest to the said firm as desirable to be purchased on their account, and that in any and all cases the said firm should negotiate for the purchase of any real property to be acquired on account of your orators and the said Stewart at the lowest possible rate at which it could be obtained from the owner, should fairly, and to the best of the knowledge and ability of the said firm, inform your orators and the said Stewart whether the said price was such as to render their acquisition of the property desirable, and recommend to them whether they should

purchase the property or not; that if your orators and the
990 said Stewart consented to such purchase the same should be made on their own account by the said firm, and that upon receiving at its request from the purchasers the cash required in the first instance and also the amounts of the deferred payments, as the same might become payable, the said firm should make due settlement with the vendor or other person entitled to payment.

Now, I wish to ask you whether or not any such agreement as that was made between these complainants or Stewart or either of them and the firm of Kilbourn & Latta?

A. There never was any such agreement in scarcely any particular in that clause of the bill. There are some things there that are substantially true, but in general there is nothing of truth in it. The plaintiffs had no premeditated plan, as far as I ever knew anything about it. We knew that they were men of means and knew that they were desirous of buying property. They named no definite amount. There was nothing ever said about the extent
991 of their purchases. Each purchase made by them might or might not, so far as any agreement was concerned, have been the only one. They bought property because they were satisfied it was a good thing to do, and they bought it as we pointed it out to them. I do not know of but one or two instances in the whole of their purchases where they ever designated any piece of property which they wanted to buy. There was no agreement with the firm in regard to compensation whatever. We were not their brokers in any sense of the word, and I do not think we ever charged them a cent in the way of commission for any transaction that we ever had with them or for any property ever sold them. I do not remember a case. We were the agents of the parties who sold the property, and had a very large amount of it on our books for sale a long time before they ever came to this city. Speculation in property in the northwestern part of the city was a matter of our creation, and they were quite anxious to get in. Some of the property
992 they bought we had had on our books since 1868, and there was no sale for it. In other words, they were just the same to us as any other purchasers that might come into the office. We had no relations with them other than that.

16 Q. Just the same as any other persons coming into your office to make purchases of property which you had on your books for sale?

A. Yes, sir. I had made a set of transfer books and had gotten a numerical book, and we kept ourselves thoroughly posted in regard to owners of property throughout the city.

17 Q. They say in this bill, as you will observe, that it was agreed that they should pay to the firm, upon purchase- made by the firm on their account, a reasonable compensation by way of commission when and in case the firm should make no charge against the vendors of the property. Was there any agreement as to that?

A. That is, simply, nonsense. We never had any agreement or talk, so far as I ever heard. I don't think a firm of brokers

993 would long remain in business and do business for other people and have two sets of clients.

18 Q. And you will further observe they say: "But in case any such charge should be made by the said firm against the vendors, that then your orators and the said Stewart should pay unto the said firm no commission whatever."

A. There was never anything agreed upon about commissions in any shape at that time.

19 Q. Then they say: "That the said firm, in consideration of so being entrusted with the purchase of such real estate and of the commissions which it might derive upon such purchase, should ascertain and point out unto your orators and the said Stewart such lots and parcels of land in the said section of the said city as in the judgment of the said firm might be most advantageously acquired by your orators and the said Stewart."

A. If they had been the only purchasers that we had there might be some truth in that statement, but as it was a question of
994 who should get in first to buy I think it wholly absurd. In fact, there is no truth in it.

20 Q. I wish you would state in that connection what was the condition of things as to that part of the city, so far as real estate for sale and the market of real estate was concerned.

A. The sales of real estate in that section of the city during the two years of 1871 and 1872 and the early part of 1873 were nearly double the balance of the city in money value paid. We had been since 1868 working that part of the city. In 1868 we had a combination formed to make some very extensive purchases of property in the northwestern part of the city, and we devoted nearly a year to studying it up and finding out who owned the property, the condition of the owners, and the probabilities of its being sold, with a view to a combination being formed, which finally failed, however. I have in my office to-day a set of reports that I got up for this combination which we formed then, covering all the property
995 from 14th street west to Georgetown and from "M" street to the Boundary.

21 Q. They say here again "that it was agreed that the firm should advise and counsel, to the best of its judgment, knowledge, and experience, your orators and the said Stewart in respect of the purchase of any particular parcel of land within the said section which they on their own motion might suggest to the said firm as desirable to be purchased on their account." Was there any agreement of that kind?

A. There never was; and let me say here that in regard to that consideration of our being entrusted with these purchases that they were not to be charged unless we failed to get commission out of somebody else; that at that time demand for property was so great and our customers so numerous that in order to keep ourselves entirely clear of jealousies we districted the city, and in a letter which Mr. Latta wrote us he put into words what we had in our minds—that the first thing we would do would be to take up anything that we saw or could get hold of which we were able to carry our-

996 selves; then next to let this customer have, or that party or the other, and so on through a dozen customers which he enumerated in that letter, giving each of them 24 hours to decide whether they would take the property or not.

Obj.—Mr. RALSTON: So much of Mr. Olmstead's answer as related to any communication between himself and Mr. Latta, as contained in a letter, is objected to because the letter is the best evidence of its contents.

23 Q. Did you bind yourself in any way to negotiate for these complainants for the purchase of any particular real estate or for such real estate as they should point out to you?

A. We bound ourselves to negotiate certain pieces of real estate. One of these pieces was square 92.

24 Q. I mean prior to the time of their commencing these purchases was any such agreement as that made?

A. There was none. We had no more knowledge of the extent their purchases would be than if you came into my office to-morrow and stated that you wanted to buy some property and
997 asked me if I had anything that was a desirable purchase. There was no concerted action, so far as we knew, in regard to their purchases.

25 Q. Was there ever prior to the time these purchases begun any meeting together and discussion as to the terms upon which you would act for them as their brokers, and did you come to any agreement prior to the making of any of these purchases that you were in any way to act for them?

A. There never was any agreement or conversation, so far as I ever knew.

26 Q. Did you prior to the commencement of the making of these purchases bind yourself in any way to give them counsel to the best of your knowledge and ability in regard to the matter of making purchases, or as to the price to be paid by them, of the property they might conclude to purchase?

A. We did not.

27 Q. Did you prior to the time of their commencing to make these purchases make any agreement with them as to the
998 matter of taking care of—managing—this property or keeping their account in regard to it?

A. We did not. We didn't have any account to keep.

28 Q. Well, I refer to accounts which might arise by reason of any purchases they might at any time make.

A. There was no purpose premeditated in regard to their purchases. They bought property from time to time as it suited them. They had no organization as a firm for the purchase of an amount of real estate or property. We treated them as we treated everybody else. We told them of a piece of property and the price and they would give two cents less. It was our habit to go to you or anybody else and see if we could get 2c. more. We were selling property at the best price we could get.

28[1] Q. In the 4th paragraph of this bill, after aver-ing that Kil-

bourn & Latta negotiated for and purchased on account of the orators and the said Stewart a number of unimproved lots
999 and parcels of land in the northwestern quarter of the said city, the purchase price of which amounted to $370,000, and that they had placed in the hands of said brokers over $100,000 in money, the said firm "announced to your orators and said Stewart the price they were required to pay for the property, and thereupon obtained their consent to the payment of such price, but in each case the said firm represented at the same time to your orators and the said Stewart that the said firm had faithfully and diligently negotiated with the owner of the property to obtain the same at the lowest price, and that the price by the firm so announced to your orators and the said Stewart was the lowest price for which the property could be at all obtained; and your orators and the said Stewart, in consenting to such price as aforesaid, relied entirely upon the truth of the said representations made by the said firm and upon the good faith and judgment of said firm in recommending the purchase."

Now, what have you to say to that averment in this bill?

1000 A. I have no doubt that we recommended the majority of purchases they made, but they made those purchases upon their own judgment. For instance, they would ask about this or that piece of property. If the first belonged to John Jones, we told them the price he asked for it; if it belonged to Kilbourn & Latta and Olmstead, we told them the price asked was so much and it could not be gotten for less. If it belonged to Smith, we told them the price. Whenever the property did not belong to us, we probably told them that we would see if it could be gotten any less. I never and I don't think any member of the firm ever had any conversation or agreement with them that we would negotiate for the lowest price. We had no interest with Sunderland and Hillyer in the purchase of the property they bought. Our entire benefits and profits were to be derived from commissions to be received from the party for whom we sold the property, and the higher the price for which we sold that property the greater our commissions.

1001 29 Q. Now, after having presented to them any property that you had for sale, or after they had themselves designated any property they wanted to buy, which they did afterwards buy, I desire to know whether they made the purchase upon their own judgment or upon yours, or just how that was?

A. They decided for themselves in every instance.

30 Q. What did you know in regard to their having examined the property before they made the purchase?

A. I think they examined very nearly every piece of property they bought. There were one or two instances of small purchases, perhaps of $5,000 or $6,000 each—although I really do not know that there ever was—where they did not.

31 Q. What, if anything, did you know of their keeping themselves advised as to the value of property in that quarter of the city in which they were making these purchases?

A. I know that they were consulting with nearly everybody

1002 at all acquainted with the value of the property, and that they were tramping over the town pretty extensively; I considered them pretty shrewd operators—men who looked after their own business.

32 Q. They say here that they relied entirely upon the truth of the representations made by Kilbourn & Latta in making their purchases. I wish to know what you have to say to that?

A. I don't think that they have any reason to complain on that score.

33 Q. Is that a correct statement of the case?

A. I do not know what they mean by saying that they relied upon the truth of our representations. They never had anything but the truth, so far as I know.

34 Q. They have alleged in the 5th paragraph of this bill that they purchased square No. 115 and that the firm represented to them that $65,000 was the lowest price at which the square could be obtained, and that the firm had advised them that the purchase of said square at such price would be a desirable and advanta-
1003 geous one; and they also aver that the real purchase price paid was $40,000 instead of $65,000, and that thereby they were defrauded out of $25,000 by the firm. Now, I desire that you shall state the facts in regard to that square #115:

A. Well, their first allegation, that they were advised that $65,000 was the lowest price at which they could purchase that property, is true. It is also true that we purchased that property for $40,000 or a little less, because we were allowed $1,000 commission upon it, and got it, therefore, for $39,000. We had been negotiating for that square, I think, four years before they purchased it, and we had an agreement with the owners of that square to purchase it for (I do not remember now just how long) certainly a month or six weeks, or something like that time, before we pointed it out to them.

35 Q. Who owned this property during the time you were making these negotiations for it?

A. It was held by trustees of a charitable institution. It
1004 was donated to this charitable institution by some elderly Quaker lady living up in New York, and was held in trust by certain trustees here. As early as 1868 our attention was called to it by one of the trustees, Mr. Baker. He told us that he was one of the active parties holding that property, and we had it on our books for sale, without any price. We had simply a memorandum for it, and if we got an offer that they would take we would sell it for them. One or two of the trustees were opposed to selling and we made several offers for it during that time, and in 1870 or 1871 I made this board of trustees, or portion of the board, several offers. I met all of the trustees finally, but Mr. Bowen, one of the trustees, always declined, until we finally consummated the purchase at $40,000. We started our offers, I think, at $27,000. I have forgotten exactly the amount, but I know it was something less than $30,000. We then found that we could get hold of Seneca stone bonds, at that
1005 time very good bonds to be held by institutions, and began

to negotiate a trade of these bonds for that square of ground. That was in negotiation for four or five months.

Obj.—Mr. RALSTON: So much of Mr. Olmstead's answer as relates to any memorandum upon his books is objected to, as the memorandum itself is the best evidence of its contents.

36 Q. In whose interest were you carrying on these negotiations which you have referred to?

A. In the interest of Kilbourn & Latta.

37 Q. In buying property you negotiated on your own account?

A. Yes, sir; you mean in regard to this one square?

38 Q. Yes, sir.

A. We had several parties at different times to whose attention we called this property, and sometimes negotiated for one and sometimes another. This transaction in regard to Seneca stone bonds was on our own account, and finally we purchased the square on our own account.

1006 39 Q. When was that final purchase made with reference to the time when the sale of this square was made to complainants—before or after?

A. It was before we ever called their attention to it. Until we acquired that property we studiously avoided saying anything about it and let nobody know anything in regard to it. If any one talked about that square and took a particular interest in it we would divert them to other property. Having been 4 years in negotiating for it and always having a longing for it, it was our purpose to buy it for ourselves and make some money out of it.

40 Q. Then, having acquired it, you sold it to Sunderland and Hillyer?

A. We called their attention to it and I told them myself—I don't know whether Kilbourn and Latta did or not, though I presume they did—that they could get that piece of property for $65,000. They had bought property adjacent to it and I think all around it at a price equal and in some cases higher, in proportion to its location, than that price at the price we sold it. They were glad to get it at $65,000.

1007 41 Q. They knew all about the property, did they?

A. They did.

42 Q. Do you recollect what amount of cash payment was required in that sale to them?

A. I think they paid us $20,000. It might have been a little more or less, for I do not recollect exactly. The account current which they had will show. They gave us two notes of $6,500 and agreed to pay $20,000 cash. One note was payable in one year and the other in two years. This made $33,000, and the balance of $32,000 was to be paid in five years, I think it was.

43 Q. They say in this bill, in respect of this matter I am now inquiring about, that they left the purchase entirely to the said firm of brokers, "whose duty it was and who had promised and agreed with your orators and the said Stewart to conduct and conclude the

said purchase wholly in their interest and for their benefit." What have you to say to that averment?

A. I don't think we had 5 minutes conversation in regard
1008 to it. We called attention to the square and told them it could be had for $65,000, and I think they designated the terms. We probably told them that $32,000 of it could stand for five years, as that was our agreement with the other parties. I think it was the same day I spoke to E. C. Ingersoll. He was desirous of purchasing property in that section also, and he offered $70,000 for it.

Obj.—Mr. RALSTON: Objected to because it does not appear that either of the plaintiffs in this suit was present at the time the conversation took place or that it was communicated to them.

The WITNESS (resuming): We never made any agreement & there never was any talk about buying it at lowest price or about studying their interest in the matter at all. All that was ever said (and I think I heard all that was said about this matter) was that they could have it for $65,000, and I think they named terms upon which they would buy it.

44 Q. But they aver in substance that you agreed to act as their brokers in purchasing this property for them from the
1008½ owners, as they state. Did you make any agreement to buy this property for them before you bought it?

A. We did not. We had no talk with them about it.

45 Q. Did they ever request you to buy this property for them?

A. They did not, nor any other, except squares 92 and 113 and, I think, 195. Those three squares they did request us to buy—one of them for Sunderland's private account and the other two on joint account.

46 Q. Were they purchased?

A. Two of them were—92 and 195. During the negotiation in regard to 113 Senator Jones came along, and then they had arranged with Senator Stewart to build on square 113, and Senator Jones wanted to be on the same circle, and they agreed to step out of the way and let Senator Jones have square 112, and I went on with the negotiation in the interest of Jones. I want to say here that in regard to square 195 they wanted us to purchase that, and, among other inquiries about town in regard to property, they
1009 ascertained the price at which it could be bought, and we advised against the purchase. They afterwards did purchase it through Col. Barrett and paid him a commission of $1,000.

47 Q. In that connection I will ask you to state whether you ever made any agreement with them of any kind by which you were not to be the purchasers of real estate in that part of the city.

A. We did not. They knew full well that we were buying real estate.

48 Q. In the 6th paragraph of this bill they aver that in the eraly part of the month of May they and the said Stewart had under consideration the desirability of purchasing lot number 17, in square number 158, and that they requested you, as their agents, to make

inquiries respecting the said lot and ascertain the lowest price at which it could be purchased on their account, and that subsequently and shortly before the 23d day of May, 1872, the said firm informed them and the said Stewart that the said firm had been in negotiations with the owner of said lot, and had ascertained that the
1010 same could be purchased for the sum of $8,316, and that this was the lowest price for which the said lot could be purchased from the owner thereof, and that the firm advised them and Stewart to purchase the said lot at the said price; that they, relying upon the truth of the representations so made by the said firm, authorized the said firm to purchase said lot on their account at that price; that the firm did purchase the lot, and informed them that a deed in due form had been executed by the owner thereof to James M. Latta, as trustee for these complainants and said Stewart, and that thereupon the firm charged them with that amount of money, whereas in truth the purchase price of the property was only $5,000. Now, I wish you to state whether or not those averments are true, and state the facts in regard to that piece of property and that transaction.

A. There was no agreement, as stated there, ever had at all. They had bought square 156, in which they knew we were interested, and they knew exactly how much we had made out of it and how much the company made out of it, of which we were a part. It was, I think, $27,000. They knew that the title was in Hallet
1011 Kilbourn, trustee, and that the firm owned an interest in that square. They bought that at 27½ cents per foot. They wanted to buy the next square, which was 157, and we would not sell it to them, although they offered 75c. per foot for it. It belonged to this same association, and we were interested in it. Then they wanted to buy square 159, and we were in negotiation for it. Two other parties wanted to buy it also, and Attorney General Williams afterwards secured it, but not through us. Then they fell back to square 158, which was situated on the south side of Massachusetts avenue, running through to "N" street, and then authorized us to go and buy anything in the square we could get hold of at 50c. a foot. They simply put a round figure of 50c. a foot on anything we could buy there, and as we picked up the property we charged it to their account at 50c. a foot. We did buy lot 17, in square 158, the lot spoken of in that allegation, for $5,000, or a little less than that. Other property we bought in that square—for instance, two lots (lot 8 and part of lot 9)—we did not make our usual commission
1012 on. We had to buy them outright, and we tried to get the property for sale to make up the difference. They knew for a long time, and I think they knew it when they first commenced purchasing, that we owned there. We told them what we paid for it. I believe 25c. a foot.

49 Q. Was it sold to them?

A. It was.

50 Q. At what rate?

A. At 50c. per foot.

51 Q. And this lot 17 was the property of Kilbourn & Latta?

A. They authorized us to buy anything in that square at 50c. We bought that for $5,000 and sold to them for eight thousand and some odd dollars. I don't recollect exactly what the amount was. In that instance they made what is ordinarily known in stock brokerage as an open order. For instance, they say buy this line or that at such a price and the broker takes care of himself. They feared we would get other people interested in that square. They wanted to control it, and tried to buy Senator Hill's property and some property there owned by a preacher.

1013 52 Q. Now, they say in the 7th paragraph of this bill that under the same inducements and same promises, undertakings, and agreements, and in substantially the same manner as stated in the 5th paragraph in respect to square 115, the said firm, in June, 1872, negotiated and, on the 7th day of that month, purchased for them and said Stewart square number 155, and represented to them that the lowest price at which that square could be purchased was $72,970.30, whereas in fact the actual purchase price was only $67,650.75, and that you fraudulently took the difference of $5,319.55 to yourselves?

A. Well, the truth of that is just this: That square was purchased, I think, from the Bancroft estate, and I have forgotten what was paid for it. The negotiation for that square was for a joint account, and Charles A. Eldridge was to furnish the money. We were under an agreement with him to buy and sell property, he agreeing to furnish the money and we to receive our usual brokerage of 5 per cent. for transacting the business, and when the

1014 property was sold the profits were to be divided. We bought that square from Burgess and Ormes for the joint account interest, for Charles A. Eldridge and the firm, and sold to Sunderland & Hillyer for $72,000, I think it was. We took out our brokerage according to agreement between us and Eldridge, and we divided the proceeds, paying Eldridge $2,000 and keeping $2,000 over and above our commission.

53 Q. Were you employed by these complainants and Stewart to make that purchase for them?

A. We pointed out that purchase and told them what it could be had for, and they agreed to take it.

54 Q. Were they well acquainted with that property?

A. They were. One of the earliest purchases they made was the square south of that, for which they paid $90,000, and it was only a trifle larger.

55 Q. Now, in this same paragraph they say that between the months of May and July, 1872, both inclusive, the firm pur-

1015 chased on account of complainants and Stewart lot 8 and the west half of lot 9 and lot 10, in square 158. Are those the lots that you referred to in your former answer in regard to lot 17?

A. Yes, sir; they bought in square 158 lots 3, 8, part of 9, 10, 17, and part of 21.

56 Q. They complain in this bill that the deeds for these several pieces of property were kept off the records, and that they were kept

in ignorance in regard to the considerations mentioned in the deeds, &c., &c.; now, please state what the facts are in reference to the matter of recording those deeds. If there was any reason for their not being recorded state what it was and what knowledge complainants had in regard to the matter.

A. I think the deeds were not recorded until October of that year. We told them that in making purchases up in that section of the city for ourselves and for others we had not recorded the deeds because we did not wish to excite the market any more than was
1016 absolutely necessary. Under the law, we were allowed six months to record a deed, and I think we advised them that it was advisable not to record these deeds and they acquiesced in that, and they knew the deeds and title papers connected with their property was accessible to them at any time and were examined by them at various times. They were kept in boxes labeled with their names and stood in a compartment in an open safe, and were referred to every day or two for one purpose or another. They were fully aware that those deeds were not recorded, and it was entirely for their advantage that they were not.

57 Q. In whose name was the title taken to the property which was purchased by them?

A. Taken in the name of James M. Latta, trustee. In some cases it was taken absolutely in his name.

58 Q. And for what reason were the titles so taken and what knowledge had these complainants and Stewart in regard to that matter?

A. They advised it. We told them that in purchases of
1017 property by what was known as the Real Estate Association the title had been generally taken in the name of Hallett Kilbourn, as trustee, and our purpose in that was to facilitate the transfer in case of a sale; also to conceal from the public the real purchasers, and the same reasons actuated them, and they so expressed themselves in having these titles taken in the name of Latta, and after that the titles held by Latta, as trustee for what was known as the Real Estate Association, were transferred to Mr. Kilbourn. They knew that, too.

59 Q. Whose notes were given for the deferred payments?

A. Well, I gave some notes, Kilbourn gave some, but Latta generally gave them as trustee. In one instance he gave his individual note for $40,000 for the purchase of square 195.

60 Q. Were those deeds executed to Mr. Latta as trustee, as you have stated, for the purpose of concealing any fraud that the firm was attempting to perpetrate upon these complainants or Mr. Stewart or either of them?

1018 A. No, sir; those deeds, papers, and everything were under their control and were, in a great many instances, examined by them.

61 Q. Was the title placed in that shape for any other purpose than the purpose which you have already stated?

A. It was not.

62 Q. Now, in the 10th paragraph of this bill the following averments are made:

"Your orators further aver that, after the completion of the purchases hereinbefore mentioned, all of the property so purchased as aforesaid, together with two other parcels of unimproved real estate, situated in the same quarter of said city, and owned jointly by your orators, and of which the purchase price paid by them amounted to about $80,000, were left in the hands of said firm of brokers for resale upon commissions, whenever a satisfactory price therefor could be obtained, and in consideration of the probable prospective commissions to be derived by said firm from such re-
sales the said firm agreed with the plaintiffs that it would
1019 keep in its own books an account of said property and
ascertain and notify the plaintiffs of all payments necessary to be made by them on account of interest, deferred principal, and general and special taxes, and, upon receiving the funds therefor from your orators, disburse said funds as might be requisite and proper and keep an account of all such receipts and disbursements without any charge to your orators for said services, except for the actual expenses advanced by said firm; that this arrangement was in fact and was considered equally by your orators and the said firm to be highly advantageous to said firm, as both the said firm and your orators believed," &c.

Now, I desire to know whether there was an agreement after the property had been purchased that the firm of Kilbourn & Latta should keep the accounts of this firm and look after the payment of interest, deferred principal, and taxes, &c., in consideration of the
probable commissions that might be received from a resale
1020 of the property? Was there any agreement of that kind?
A. There was not.

63 Q. Was there any agreement between the firm and these complainants and Stewart or the firm and these complainants on that subject?

A. There was not at that time.

64 Q. I am speaking of after the purchases were made.

A. There never was any real agreement in regard to it, so far as I understand. The first time anything was ever said about any compensation to the firm was by Col. Hillyer when he came back from Europe, in 1873, after the panic. They went away to Europe after making their purchases and left the property with us for sale, and put their price upon it. There was no agreement at that time and no understanding than this: That as payments were due we were to draw, in regard to Sunderland's portion, on the Bank of California, at sight, by telegraph, for amounts to be paid; for Hillyer's
portion he was to remit. There was no agreement in regard
1021 to sale or commissions and, so far as I know, there was no
conversation relative to compensation or to our controlling the property. They could not confer any advantage upon us by giving us control of it. We had that.

65 Q. If at any time there was anything said about what compensation the firm should have, so far as you know, for taking care

of this property and looking after these payments, &c., &c., state what it was, when it was, and between whom.

A. In 1873, when Mr. Hillyer came back from Europe, and after the panic, we discussed the probability of selling this property, and it seemed to be pretty generally conceded that it was very remote; that we would have to hold it for some time. Then the question came up as to what we were going to charge them for taking care of their property, looking after taxes, assessments, and watching their interests generally in reference to the property, and I heard part of a conversation between Mr. Hillyer and Mr. Latta, in which
1022 Latta stated that he thought we ought to have at least one per cent. on the entire purchase value of the property, which amounted to somthing over $6,000 per annum. Mr. Hillyer said that he thought it was too high; that three-fourths of one per cent. would be a very round charge, and the matter was not settled. Latta held out for his one per cent., and Hillyer did not offer anything, and we finally agreed between ourselves that we would charge them at the rate of $5,000 per annum from the time of their purchase as long as we had control of the property.

Obj.—Mr. RALSTON: I object to the answer, so far as it does not appear that Mr. Olmstead himself was present.

66 Q. About what time did these complainants go to Europe?

A. One went in the fall of 1872 and the other in the spring of 1873.

67 Q. When did the panic occur?

A. 18th of September, 1873.

68 Q. What was the condition of the real estate market
1023 from that time until 1876, when this firm was dissolved?

A. It was completely flat.

69 Q. Could this property have been sold to advantage during that period of time?

A. I don't think there was a time in that period that it could have been sold at cost, or any other property that had been bought between the 1st of January, 1873, and the time of the panic, Sept., 1873. During that period property was at its very highest point, and all property purchased during that time could not have been sold afterwards, up to the dissolution of the firm, at its cost.

70 Q. Now, state what was done by that firm or any member of it in regard to the management of the business connected with this property during the period intervening between the time of purchase and the time of the dissolution of the firm.

A. At the time that property was purchased the improve-
1024 ments of the District were being carried on to a very great extent. It was our custom — either one or two or all of us some time during the day to go about through this whole territory, or such of it as it was possible to get over, with our other business, to see that contractors and others did not remove the footways and the curbstones. Contracts were being executed to such an extent and material was so hard to obtain that it was often the case that parties would steal the sidewalks and curbstones and use them in

fulfilling their contracts. For instance, in square 93 I found, one day when riding out that way, that a contractor had taken up the night before all the footway and curbstones on the south side of that square on Q street, and had carted it all to the District property yard and got credit on his contract for so much material turned in. There were many instances of that kind. One of the largest property-holders here, Mr. Todd, was daily doing the same thing in order to watch and preserve his property. Then after all
1025 this came the assessments.

71 Q. What was done about that property which was carted off?

A. I made a memoranda in regard to it and when the proper time came I put in a claim for it and got credit for it and got credit also for Mr. Hillyer and — went to his credit since the property was divided between Sunderland & Hillyer. I think it was $900 that I saved to him on this transaction. They took up this footway and curbstone and plowed up the street, charging him an assessment for the improvement of that front, and I then made claim for that material carted off, and by having this memoranda I was able to offset the entire assessment and save him $900.

72 Q. That information you acquired by looking after the property during the time you referred to?

A. That was one of very many instances. On square 113 (I think that is the square where Col. Stewart's house is) we employed men to go and pick the sidewalk up and pile the material on the
1026 square, and then they sold that and I recovered that as they improved the square. Again, in regard to the assessments, the District government passed laws charging the assessments on real estate each year, and it was a very considerable labor to go over and look up all these assessments to see that they were kept at a proper basis. For instance, square 156, which Sunderland & Hillyer paid 27½c. per foot for, the assessment on that square one year was 40c. per foot. I got that reduced. In one year I reduced their assessments, by appeals to the board of assessors, over $40,000. At the time there was another tax here that was considered questionable as to its legality, known as the sewer tax. In a great many instances we paid that tax, and then, as matters developed, we found that it was illegal and could not be collected, and by action of Congress we recovered that. They bought a large amount of territory, and in many instances small lots, and I presume there were 150 different titles. The District government kept its accounts with the
1027 owners of the property and not with the property itself. So that in getting your tax bills it is necessary to know who owns the property. In the first place, you have to schedule the property and then put down the name of the owner; and as the market had at that time been pretty active and the largest owners were not all on the tax books, it was therefore the task of a week to get the annual tax bills. Again, in many cases, mistakes were made and the whole work had to be gone over again.

73 Q. W-o attended to that?

A. I did.

74 Q. In making these purchases there were deferred payments, were there?

A. There were.

75 Q. State whether or not that was to any considerable amount.

A. I think it was to about two-thirds of the amounts of purchases.

76 Q. Now, who attended to the matter of taking care of the interest of those deferred payments?

A. The firm did. We kept the accounts. We kept a bills-payable book for Sunderland & Hillyer's account, and we ren-
1028 dered them monthly statements. I do not know whether the statements were always rendered monthly, but certainly as payments became due. For instance, payments falling due in the month of June we would send them a statement for in the month of May in order to prepare them, and then when the payments came due we would draw for the money.

77 Q. What was done, if anything, with regard to deferred payments when they came due and the money was not available to meet them? If there were any extensions or negotiations with reference to matters of that kind, state what they were and who conducted them and all about just how that business was done.

A. There was trouble about that even before they paid the notes. After the panic in 1873 we had large payments to make and nearly all the banks here had closed, with the exception of Riggs & Co. and two or three others; but a majority of the banks refused to pay currency and would issue certified checks. Quite a large payment
1029 was due about that time to Thomas Young; I think some $13,000 on square 156. We then had money belonging to Sunderland & Hillyer which they had remitted, but it was not possible to make it available here in Washington. We offered Thomas Young, what was currency here, or supposed to be, a certified check, and he declined to receive it and threatened to sue. We had a great deal of trouble with him, and after they failed to make remittances the creditors were very clamorous. The creditors or holders of deferred notes knew nobody in the transaction, so far as I am aware, but Mr. Latta, who made the notes generally, or the members of the firm. They did not know who the purchasers were, and in this section the notes were considered as being the notes of the firm and its obligation. After we had exhausted every other means of pacifying them and had told them that the property belonged to other people, they made the point that they did not know anything about that and it was too late to raise the point; that so far as they knew the firm of Kilbourn & Latta was responsible and they looked
1030 to them for payment. Carrying this amount of property through a panic was not a happy lot, and they would have been utterly ruined but for our exertions in regard to that property. If one piece of it had been allowed to go to sale, or there had been a break in it, that whole part of the city would have gone. I do not think there was a week from 1873 to the dissolution of that firm that there was not in one or more papers of this city—in the N. Y. Graphic, N. Y. Herald, and other journals outside of the city—articles written by one or the other members of that firm in regard

to real estate in the city of Washington and Washington as a home, &c. Everything was done to keep things up.

Obj.—Mr. RALSTON: This answer is objected to as irrelevant.

78 Q. If these negotiations had not been conducted, the creditors had not been pacified, and this property had gone to sale on trust deeds upon which the deferred payments were secured, would
1031 the property at such sale have brought enough money to have paid the incumbrance upon it?

A. I do not think it would have. The courts in this city, seeing the condition of things here, very materially assisted in holding the business interests by granting injunctions and giving restraining orders on sales of property.

79 Q. Now, for all the services which the firm rendered, in connection with the business of which you have been speaking, what compensation was paid to the firm?

A. Five thousand dollars a year.

80 Q. How long have you been engaged in the real estate business in the city of Washington?

A. Since the 30th day of August, 1865.

81 Q. Now state whether or not the sum you have mentioned was or was not a fair price or compensation for the services that were rendered.

A. I think it was grossly inadequate.

82 Q. Complaint is made in this bill that the firm rendered to the complainants no accounts current from some time in 1872
1032 or 1873—I don't remember the exact date—until 1878. Now state what the firm did do in regard to giving the complainants information as to the state of their accounts and as to the condition of this business.

A. Up to the time they went to Europe they had a complete account current, which comprised everything. After that time we sent them statements showing what payments were maturing, what taxes were to be paid, and what interest had to be paid. In giving them statements we noted the amount of money that we had received from all sources. That was done right along from 1873 to 1876 or 1877, in fact. I do not know that we ever rendered them another account current until 1878. Any boy 15 years old could have made an account current from the statements rendered, as they took up the account as it was and gave them credit for money received afterwards and charged them with disbursements. By putting the two together they could ascertain exactly what the condition of their account was. I do not think they looked at the accounts
1033 current. At all events, they did not answer a letter we wrote them in reference to it.

The taking of this deposition was here continued until Wednesday, at 7 o'clock p. m., at the same place.

WM. T. S. CURTIS, *Examiner.*

Met, pursuant to agreement, at office of J. F. Olmstead, on this the 25th day of January, 1882, when Mr. Olmstead was cross-examined.

Present: Messrs. Totten, for Mr. Olmstead, & Mr. Wilson, for defendant; Messrs. Hillyer & Ralston, for plaintiffs.

Cross-examination by Mr. HILLYER:

1 —. Is there an action pending in the supreme court of the District of Columbia against yourself and Mr. Kilbourn, by Sunderland & Hillyer, in which the plaintiffs seek to recover upon substantially the same charges and causes of action about which you have been examined in chief by the defendant?

A. That is a legal question, it seems to me.

1034 2 Q. Make whatever answer you please.

A. That is a legal question, it seems to me.

3 Q. Did you state in an examination by the plaintiff in this action of yourself, as a witness, that there was such an action pending against yourself and Kilbourn, and that it was identical with the present action?

A. I might have volunteered such information.

4 Q. Is it true?

A. I reckon so.

5 Q. Do you decline to state whether it is substantially correct or not?

A. You have the record. You can read what it states.

6 Q. Is there an action pending against yourself and Kilbourn in the supreme court of the District of Columbia?

A. There is.

7 Q. Who are the complainants?

A. Sunderland & Hillyer.

8 Q. Do they seek to recover there in that action $25,000, which they allege was the amount out of which they were defrauded in the purchase and sale to them of square 115?

A. I think they stated $24,000.

1035 9 Q. In that action do the complainants also seek to recover for money that they allege to have been fraudulently obtained by Kilbourn & Latta in the sale to them of square 155 and the lots 17, 18, 10, and west half of 9, in square 158?

A. I think there is something of that kind in that bill.

10 Q. In that action some of the testimony has been taken by the complainants, has it not?

A. Some of it has.

11 Q. If Mr. Latta is liable upon the charges concerning which you have testified in your examination by the defendant in this case, then yourself and Mr. Kilbourn are also liable, are you not?

Mr. WILSON: That question involves a question of law purely, and it is objected to by the counsel for defendant.

A. I am unable to answer the question. I am not an attorney.

12 Q. When was the firm of Kilbourn and Latta and Olmstead, under the style of Kilbourn and Latta, organized?

A. In January, 1871.

1036 13 Q. Was the agreement of the creation of that firm made at that time?

Mr. WILSON: I object to that question as being entirely immaterial to this case when an agreement was made or what it was.

A. I do not know when the agreement was made exactly.

14 Q. You have stated what the business of the firm of Kilbourn and Latta was in 1872. Did that firm advertise to do business?

Mr. WILSON: Well, I do not see the relevancy of that, and therefore I object to it.

A. I decline to answer.

15 Q. You stated that a part of the business of the firm was loaning money. What do you mean by loaning money?

A. I mean what I said. I do not know any better definition for it.

16 Q. Did you mean that the purpose of the firm was that the firm should loan money to other people upon interest?

A. Well, I don't know what the complainants in this case have to do with the business of the firm of Kilbourn & Latta

1037 any further than it pertains to their transaction; so I decline to answer anything in regard to the business of the firm of Kilbourn & Latta beyond that.

Mr. WILSON: The question is objected to by the defendant because it is immaterial to the issues in this case.

Mr. HILLYER: Do you decline to answer the question which I ask you?

A. I have given you my answer.

18 Q. You stated that the firm did a business of $2,000,000 a year or more than that. Did you mean by that they did that amount of business in real estate transactions?

A. I did not make any explanation of what it was.

19 Q. Will you state now what the business was that amounted to $2,000,000 a year?

A. No; I will not.

20 Q. Will you state how much of that was real estate business and how much other business?

A. No; I will not state that either.

21 Q. What means had you in the year 1872?

1038 Mr. WILSON: I object to that question because it is immaterial to this case.

A. I decline to answer.

22 Q. What do you know of the pecuniary means of Kilbourn in 1872?

Mr. WILSON: I object to that also for the same reason just given.

A. I decline to answer that.

23 Q. What do you know of the pecuniary circumstances of Mr. Latta during that year?

Mr. WILSON: I object to that question for the same reason.

A. I decline to answer.

24 Q. Did the firm of Kilbourn & Latta act as agents or brokers for Sunderland, Hillyer, and Stewart in any transaction of purchase of real estate in the months of May or June, 1872?

A. I think we did.

25 Q. In respect to the purchase of what property?

A. Square 195; we acted as the agents of Sunderland & Hillyer, possibly, in one or two other pieces. I do not remember now distinctly. They did not pay us anything for it.

1039 26 Q. Can you ascertain by looking at your books or from any memoranda which you may have what other pieces of property besides square 195 there were with respect to which you acted as the agents or brokers of Sunderland, Hillyer, and Stewart?

A. It occurs to me that is the only piece.

27 Q. Did you understand my question?

A. I tried to.

The question was re-read.

A. No; I cannot.

28 Q. Will you state positively whether there were or were not other pieces of property than the one you have mentioned in which the firm of Kilbourn & Latta acted as the agents or brokers of Sunderland, Hillyer, and Stewart during the months of May or June, 1872?

A. I do not think we did; I do not remember an instance. If we did it will show in the account current which they have. If you will show it to me I will answer the question explicitly.

29 Q. Can you tell by looking at your books?

1040 A. I could after examination of the books, which would take probably two or three hours.

30 Q. I understand you that you have no recollection of having acted as their brokers or agents in respect to any other property except that which you have mentioned?

A. That is my recollection.

31 Q. I ask you to produce your book to the commissioner for the purpose of having it examined by counsel for complainants, in order to ascertain whether or not there is upon that book any charge of commissions by the firm of Kilbourn & Latta against Sunderland, Hillyer, and Stewart during the months of May or June, 1872.

A. I decline to do that for the same reason that I did before.

32 Q. Do you decline to do it under advice of counsel for the defendant, or is there a personal objection which you make to it?

A. I just thought I would decline then; that is all.

33 Q. Did the firm of Kilbourn & Latta act as agents or brokers for any of the sellers of property to Sunderland

1041 and Hillyer in the months of May or June, 1872, in respect to such sales?

A. I do not comprehend the question now.

34 Q. The question will be re-read.

The question was re-read.

A. Yes; we were brokers for parties who sold property to Sunderland and Hillyer.

35 Q. State in respect to what parcels of property which were purchased by Sunderland & Hillyer the firm of Kilbourn & Latta were brokers or agents of the sellers.

A. I think we acted as the brokers of the sellers in nearly every piece of property except squares 195, 115, and the lots in square 158. There may be some other instances where we did not.

36 Q. You did not act, then, as agents or brokers of sellers of square 115 or any of the lots in square 158?

A. I think not. My recollection is that we bought that property ourselves upon our own account.

37 Q. Did the firm of Kilbourn & Latta, to your knowledge, disclose to Sunderland, Hillyer, and Stewart or either of them
1042 that they, the firm, were sellers or interested in any of the property which they purchased during the months of May and June, 1872?

A. I did. One of that firm spoke to me several times about one piece of property that the firm of Kilbourn & Latta owned and which the other members of the firm were willing to sell at the price offered for the whole of the property in that square and which I did not want to sell.

38 Q. Designate the parcels of property purchased by Sunderland and his associates, with reference to which you or any other member of the firm of Kilbourn & Latta disclosed to Sunderland, Hillyer, and Stewart or either of them that the firm were the sellers or interested as sellers.

A. I disclosed to Curtis J. Hillyer the fact that Kilbourn & Latta owned lot 10, in square 158, and had owned it for some time, and also part of lot 21, in square 158. Lot 10 I did not wish to sell. My partners were willing to sell it at the price that Sunder-
1043 land and Hillyer offered for all lots that could be obtained in that square, which was 50c. a foot. I finally consented to sell lot 10, and they purchased it.

39 Q. Have you mentioned all?

A. I think so. I do not know. Yes, I guess I have.

40 Q. In reference to any of the other parcels of property purchased by them did you disclose or did they, to your knowledge, know who the owners of the property were?

A. I do not know whether there were any others or not.

41 Q. You have stated in your examination-in-chief that there were no difference in the relations between the firm of Kilbourn & Latta and Hillyer, Sunderland, and Stewart than that which existed between the firm and any other person who came to purchase property from it?

A. I think I stated that.

42 Q. During the months of May and June, 1872, did Sunder-

land, Hillyer, & Stewart have money in the hands of Kilbourn & Latta?

A. They did.

1044 43 Q. Did they not sometimes have a large amount over and above that needed to pay for purchases previously made?

A. They did; but to cover purchases contemplated, which were under consideration or for which bargains had been made and refusals gotten.

Mr. WILSON: I object to this because it is immaterial to this cause.

44 Q. Was there any other person that had the same sort of relations with the firm of Kilbourn & Latta in that respect?

A. That I decline to answer.

45 Q. You state in your examination-in-chief that it would have been absurd for the firm of Kilbourn & Latta to have acted as the agent of Sunderland & Hillyer and Stewart because they could not well act for two sets of clients. Did you have any other client- than Sunderland, Hillyer, and Stewart in reference to the purchase by them of square 115?

A. We sold square 115 ourselves to them.

46 Q. You had no other client, then, in reference to that square?

1045 A. No, sir; not when we sold it to them.

47 Q. Did you have any other client, in reference to square 155, than Sunderland & Hillyer?

A. Square 155. We sold that square to Charles A. Eldridge on a joint account—that is, Eldridge and the firm of Kilbourn & Latta. I think that is the square. Yes; that is it.

48 Q. The question is, Did you have any other client whose interest would have conflicted with that of Sunderland & Hillyer in the purchase of that square?

A. Sunderland and Hillyer were the purchasers of that square from our client. We did not represent them at all in the matter.

49 Q. I understand you to say, then, that you did have other clients, in reference to that square?

A. I say we sold it to Sunderland & Hillyer.

50 Q. I wish to know if there were any other clients.

A. We sold it to the joint account of Charles A. Eldridge and the firm of Kilbourn & Latta.

1046 51 Q. Did you have any other client whose interest would have conflicted with an agency on your part for Sunderland, Hillyer, and Stewart in reference to the purchase of lot 17, in square 158?

A. We owned that lot and sold it to Sunderland and Hillyer.

52 Q. I wish you would answer my questions, Mr. Olmstead, they are certainly plain.

A. Well, you ask if we had any other client than Sunderland & Hillyer. Now, that implies to my mind that Sunderland and Hillyer were clients in the purchase of these pieces of property, which I say is not the fact.

53 Q. I wished to ask whether you had any client other than Sunderland & Hillyer, in reference to the purchase of lot 17, and I will add lot 8, lot 10—west part of lot 10, in square 158—or not?

Mr. WILSON: Well, that is a very different question from the other one.

Mr. HILLYER: Well, I hope this is a good one. If the other one was bad it was asked unintentionally.

1047 Mr. WILSON: I would like to know what you mean by "client" in asking these questions?

Mr. HILLYER: I think I am following one of the answers of the witness, in that he could not have "two sets of clients."

Mr. WILSON: Will you define what you mean by client?

Mr. HILLYER: I mean by a client a person for whom one is acting in the capacity of agent or broker in the sale of property.

Mr. WILSON: You mean a customer for this property you have mentioned?

Mr. HILLYER: I think the definition is plain.

The WITNESS: In regard to the purchase of these lots I will try to explain as fully as I can the transaction.

Mr. HILLYER:

54—. I would prefer that you will first answer my question.

A. If you wait a minute I will. In regard to purchase of
1048 lots in square 158 Sunderland and Hillyer made us a direct proposition to try anything that they could get in that square at 50c. a foot. At the time they made that proposition they knew that we owned two lots in that square, but whether they knew any others or not I do not know. We bought that property—all that they finally bought in that square—ourselves and sold it to them.

45 Q. The question is whether in the purchase of this property you acted as the agents or brokers for any one else than Sunderland and Hillyer?

A. We did not act as the agents or brokers of Sunderland & Hillyer.

46 Q. That is all the answer you have to make to the question?

A. It is.

47 Q. Did not you tell Sunderland & Hillyer at or about the commencement of negotiations for these purchases that they would do better not themselves to attempt any negotiations with the owners of property which they might desire to purchase?

A. I do not think I did.

48 Q. Did you ever know of either one of them ever hav-
1049 ing any communication of any kind with any of the owners of the property which they purchased?

A. I do not know that I ever knew of any instances.

49 Q. The letter to which you referred in your examination-in-chief, written by Mr. Latta from Altoona, is the same one, is it not, which you refused to produce upon the examination of yourself as a witness for the complainant in this case?

A. I refused to produce a letter written by Mr. Latta from Altoona in May, 1872.

50 Q. The question is, Is that the same letter concerning which you testified in answer to an interrogatory by Mr. Wilson in your examination-in-chief by the defendant?

A. I think I testified to some portions of that letter in my examination in this case for the defendant.

51 Q. In reference to square 115, was this $65,000 which was finally paid an amount offered by Sunderland and Hillyer to the firm of Kilbourn & Latta or was it an amount offered or fixed by the firm of Kilbourn & Latta as a price to Sunderland & Hillyer and accepted by them?

1050 A. My recollection is that we told Sunderland and Hillyer—I don't think there was any Stewart—that they could have that square for $65,000. They said they would take it. I don't think there was ever five minutes' conversation about it, except the terms.

52 Q. The offer was made by Kilbourn & Latta and accepted by Sunderland & Hillyer?

A. That I think was the condition of things. The proposition was made by Kilbourn & Latta and accepted by Sunderland & Hillyer.

53 Q. How long previous to that had you purchased this square?

A. We had had a partial refusal of that square for a considerable time; I do not think we absolutely held the title of that property more than a few days before we turned it over.

54 Q. Did you ever hold the title to it?

A. We did.

55 Q. In whose name was the title held?

A. James M. Latta, trustee.

56 Q. Was there ever a deed made by the firm of Kilbourn & Latta or James M. Latta, trustee, conveying the property to Sunderland & Hillyer or to anybody as trustee for Sunderland & Hillyer?

A. I do not think there was ever but one deed made.

1051 57 Q. To whom was it made, and by whom?

Q. I think from the Institution for the Education of Colored Youth to James M. Latta, trustee. The transaction was, you might say, simultaneous. We got the property and transferred it in a way that it should remain to Sunderland & Hillyer. We had been for four years, I think, trying to buy that property, and we had indirectly been some little time educating the public mind to the idea of its value.

58 Q. Was the title to any other property than this held in the name of James M. Latta, trustee?

Mr. WILSON: Do you mean property involved in this suit, or what?

Mr. HILLYER: Title to any other property, of course, owned by Kilbourn & Latta.

Mr. WILSON: I object to it. It is immaterial, so far as the question discloses its purpose, in the issue of this case.

A. I think there was.

59 Q. Was it not agreed between the members of the firm
1052 that any property which they should buy should stay in the name of J. F. Olmstead, trustee?

Mr. WILSON: I object to that because it is immaterial to this case.

A. There was such agreement some time in 1872, I think.

60 Q. Did you not know that in the deed which the Institution for the Education of Colored Youth, the sellers of this property, executed to James M. Latta, trustee, it was expressed that James M. Latta held that property upon certain trusts, which were declared in a writing made contemporaneously with the execution of the deed?

Mr. WILSON: The question is objected to because the deed itself is the best evidence of what was contained in it.

A. I do not know that that clause was not in the deed.

61 Q. Do you not know that that deed was executed to James M. Latta, trustee, in trust for Sunderland, Hillyer & Stewart?

A. I know that it was not.

62 Q. Was there ever such declaration of trust made as in the deed referred to?

1053 A. Neither in that case nor in any piece of property you bought.

63 Q. Why was it not made?

A. Well, I do not know any other reason except that it was not; it was dropped from time to time and never was done.

64 Q. Did you expect to sell that property when you bought it?

Mr. WILSON: I object to that. What they expect to do with it is not material to this case.

A. I think our expectation was that you would pay $65,000 for it if you could get it, and if you did not that somebody else would pay more, as the very day you agreed to take it, I think, Mr. Eben C. Ingersoll offered us $70,000 for it.

65 Q. What made you think that we would take it for $65,000?

A. Well, we had made up our minds that we would hold it until we got that much; that we would make that much money out of it before we would let anybody have it, and after we knew that
1054 we were going to get it we were looking around pretty lively for somebody to buy it at our price.

66 Q. You never heard Sunderland & Hillyer say anything about it before that, did you?

A. Never did.

67 Q. You did not know whether they had ever been examining that property with a view to purchasing it?

A. So far as I knew, they never had. We were very careful that

they should know nothing about it until we got it, or anybody else.

68 Q. You say Mr. Ingersoll wanted to buy that property?

A. I say Mr. Ingersoll did. He would buy property on his own account and buy property in connection with others. Whether he wanted to buy this property on his private account or not I do not know.

69 Q. Eben C. Ingersoll is dead, is he not?

A. I believe he is.

70 Q. Did he buy any property in that section, to your knowledge?

A. He did.

71 Q. Where?

1055 A. Well, not immediately in that section—not right in that place.

72 Q. Well, whereabouts did he buy, to your knowledge?

A. In square 211, on Rhode Island avenue between 14th and 15th streets. It was quite a large purchase. In square 160 he made quite a considerable purchase. This is just east of square 115.

73 Q. You say that square 160 is directly east of 115?

A. Well, yes—I say that. One square intervenes. He tried hard to buy square 159 at the same time you were trying to buy it, and he did succeed—whether in 1872 or 1873 I do not now recollect—in buying square 139, that Mr. Sunderland and the firm of Kilbourn & Latta were trying very hard to buy on joint account, Sunderland to furnish the money and Kilbourn & Latta to buy the property and divide profits, but which he got away from us. I think that was in the early part of 1873 that he bought this square 139. It was the first square east and south of this square 115.

74 Q. Whose money did you use in purchasing square 115—in making the cash payment?

1056 A. We used what money we had in the box.

75 Q. Whose was it?

A. I think it was ours. We kept no separate account with anybody's money. All the money we had was in two bank accounts.

76 Q. Did not you use money of Sunderland, Hillyer and Stewart?

A. No, sir; not necessarily.

77 Q. Did you not have their money in your hands at that time when you made this cash payment?

A. I presume we did. We had quite a large amount of other money like theirs.

78 Q. There for purchasing property?

A. There for purchasing property.

79 Q. Did the firm of Kilbourn & Latta have any money on hand for the purpose of purchasing property at that time?

Mr. WILSON: I object to the question because it is immaterial. It makes no difference whether they had any money of their own or not.

A. I decline to answer the question, as I think it to be irrelevant to this case; not that I have any objection, though.

1057 Q. 80. It is not for you to decline to answer a question unless you have some personal objection to it, as I understand. It is immaterial to me whether you do or do not.

A. Well, let us skip, then.

81 Q. I do not mean by that that I do not insist upon the question when you decline to answer—that you have a right before a commissioner to take your own course.

The further examination of the witness was postponed until the 26th day of January, 1882, at the same place, at 7 o'clock p. m.

WM. T. S. CURTIS, *Examiner.*

Met, pursuant to last adjournment, at the office of Mr. Olmstead, at 7 o'clock p. m., this 26th day of January, 1882.

Present: Messers. Hillyer & Ralston, for complainants; Messers. Wilson & Totten, for defendant.

Cross-examination of Mr. OLMSTEAD (resumed):

By Mr. HILLYER:

82 Q. Mr. Olmstead, you say that you could have sold this
1058 square to Mr. Ingersoll and others for $70,000. Why did not you sell it to them?

A. Because we agreed to let you have it and you agreed to take it.

83 Q. I think you said it was the same day that you agreed to let us have it?

A. No; I did not say that.

84 Q. I think your testimony shows that it was the same day, although I think that is immaterial.

A. I think my testimony shows that it was the same day upon which you agreed to take it, or the next day. I was not positive about it.

85 Q. Why were you in such haste to sell it to Sunderland & Hillyer?

A. I think the natural haste to make $25,000 would be a reasonable answer.

86 Q. Did you consider the property worth $65,000?

A. I not only considered it worth $65,000, but I knew Sunderland & Hillyer were anxious to get it for $65,000. They did not hesitate, I don't think, for five minutes after they were told they could get it at that price.

87 Q. How long had you owned the property before you sold it to Sunderland & Hillyer?

1059 A. Well, we had had it, so that we controlled it. We controlled it for some time. I don't know how long exactly—some two or three months, I believe. However, I don't know exactly as to time.

88 Q. What do you mean by controlling it?

A. Why, we had been negotiating for some four years with the trustees who owned it. We made them several offers and proposals of all sorts. Some had been accepted by some members of that committee, others objected, and one proposal and another fell

through. The last offer that we made was $40,000, and we knew that (as I attended the last meeting of that committee), with the exception of Mr. Bowen, the committee would be unanimous in selling us the property, and Mr. Bowen we knew would decline, and he did. He afterwards went out of the board in consequence of not being able to control it.

89 Q. How long had you owned it absolutely before you sold it to Sunderland & Hillyer & Stewart?

1060 A. I do not say that we absolutely owned it—that is, I do not think that we held a legal title of it 48 hours. We arranged that in this way: The property should be transferred to James M. Latta, trustee, and that James M. Latta, for the consideration of $40,000, would let the deed remain as the title that Sunderland & Hillyer held for that property.

90 Q. Did you during these 48 hours make any attempt to sell it to anybody else?

A. I think we called the attention of two or three parties to it. I do not know positively whether we did or not.

91 Q. Why did not you sell it to the other parties?

A. Well, we were quite satisfied to sell it to you.

92 Q. Did anybody else offer you $65,000 before Sunderland & Hillyer bought it?

A. I do not think they did.

93 Q. Did anybody else offer you $40,000 before Sunderland and Hillyer bought it?

A. We did not offer it to anybody directly until we offered it to you.

94 Q. You knew that that property was under the control of a corporation managed by a board of trustees, did you not?

1061 A. I did.

95 Q. You knew that there could be no valid purchase of it made, except through the action of the trustees, did you not?

A. I knew that perfectly. I had to go to New York once or twice to get one of the trustees. I think I went there twice before the deed could be properly executed. There was some mistake about the first deed. That was before a word was said to you about it.

96 Q. Did you use any influence with any of the trustees for the purpose of procuring them to sell this property at that price?

Mr. WILSON: I object to that question. It is a matter of no consequence to this case and is wholly immaterial to it. It is an attempt to introduce some scandal into the case, if such be a fact, although I do not know what the fact is.

A. As that is a matter between the trustees and the firm of Kilbourn & Latta and not your business, I decline to state.

97 Q. I understand, then, that you decline to answer the question?

1062 A. I made my answer.

98 Q. You were not the agents of any of the trustees, as I understand you, in regard to this property?

A. As that is a matter that does not pertain to this case, I decline to state it.

99 Q. I understand that you decline to state whether you were the agents of the trustees in regard to the sale of this property?

A. I made my answer.

100 Q. I insist upon your answering that question or refusing to answer it.

Mr. WILSON: I object to the question because it is wholly immaterial to this case whether they were the agents of these trustees or not.

Mr. HILLYER: What is the answer to the question? Do you know whether you were the agents of these trustees or not?

Mr. WILSON: I object to that for the reason above given.

Mr. HILLYER: What is the answer?

1063 A. I decline to answer it.

101 Q. Up to the 48 hours from the time this property was sold by you to Sunderland, Hillyer & Stewart, was there any reason why Sunderland, Hillyer & Stewart should not have bought this property themselves from the charitable corporation by whom it was owned at the price of $40,000 or $41,000, if they choose to outbid Kilbourn & Latta in reference to it?

A. I am sure I do not know.

102 Q. I understand you to say that there was a great deal of excitement about real estate about that time in the city of Washington, particularly in that quarter of the city?

A. I think I have stated that.

103 Q. Do you suppose that the firm of Kilbourn & Latta were the only ones who knew about the real value of this piece of property, square 115, at that time?

A. I think they are the only ones that knew anything about it. Others might have known about the value. It was your habit to inquire and be pretty generally informed about the value of real estate before you made any offer for it.

1064 104 Q. You do not suppose, then, that the firm of Kilbourn & Latta had any peculiar knowledge in reference to the value of this square above that held by other persons who were seeking to buy real estate at that time?

A. I am sure I do not know anything about that. I do not think they would be 12 years in business without acquiring some knowledge.

105 Q. Did you suppose that the trustees of this institution had any peculiar reason for selling this property to Kilbourn & Latta rather than selling to Sunderland, Hillyer & Stewart or anybody else?

Mr. WILSON: I object to the question for the reason that it is immaterial to the issues of this case.

A. I am sure I know nothing about that.

106 Q. Did you at the time suppose anything about that?

A. As that is a matter of ten or so years back——

Mr. WILSON: I object to the witness stating anything he supposes or being asked as to his suppositions.

1065 Mr. HILLYER: Is the question answered?

A. It is, sir.

107 Q. Do you know any reason why, prior to the 15th day of May, Sunderland and Hillyer, if they had wanted to buy square 115, could not have gone to the trustees of this institution and have bought it for the sum of $41,000?

A. Yes.

108 Q. State what it is.

A Because they did not know the trustees and did not know anything about the square, except that there was an open lot there.

109 Q. You know of no other reason than that which you have stated, do you?

A. I do not know whether I do or not. I might have known some other reason then which has now escaped my memory.

110 Q. You state that the firm of Kilbourn & Latta had been looking after this square several years, if I understand you this time?

A. I think I have so stated.

111 Q. Do you mean that they were looking after it prior to the time when you became a member of the firm?

A. I do.

1066 112 Q. State what you know as to the first business transaction of any kind which Kilbourn & Latta had in reference to this square.

A. As I consider that a matter that has nothing to do with this case, as it was before I became a member of that firm, I decline to state anything in regard to transactions between Kilbourn & Latta, either prior to or after 1871, with the owners of this property.

113 Q. Did you think when you stated they had been negotiating about this property for several years that it had nothing to do with this case?

A. Yes; I thought that it had not, but I thought I would give you that information as was beneficial to you and desirable for you to have and accommodate you that far.

114 Q. You refuse, then, to state to me the first connection of the firm—the first business relation of the firm of Kilbourn & Latta with this square?

A. I refuse to state anything further in regard to this square which does not pertain to your purchase of it.

1067 115 Q. Are you advised by counsel that the only thing you will answer in cross-examination in reference to that square is that which pertains to the purchase of the same by Sunderland, Hillyer & Stewart?

A. I decline to state whether I am advised or not or what I am advised.

116 Q. Did the firm of Kilbourn & Latta ever have a refusal of the square before they bought it?

A. They did.

117 Q. How long before?

A. Well, I have stated that I thought it was—it might have been a month or two—three or four months. I don't remember now.

118 Q. State how that refusal was obtained and the character of the transaction in which it originated.

A. I decline to state anything further in regard to that.

119 Q. You have answered in your own case that you had a refusal of that square?

A. I have.

120 Q. And you decline to state the manner in which that refusal was obtained and the circumstances under which it originated?

1068 Mr. WILSON: I object to the witness being cross-examined as to matters with reference to which the complainants examined him as their witness in the case pending in this District, wherein the complainants in this case are the complainants and the witness and Mr. Kilbourn are the defendants.

121 Q. Mr. Latta, the defendant in this case, in his answer, said that the firm of Kilbourn & Latta had what is called a broker's refusal of the square 115 prior to their purchase of it; is that a fact?

A. I am sure I do not know. I have not read his testimony.

122 Q. As a member of the firm of Kilburn & Latta, then, you would have no knowledge, I suppose, if such were the fact?

A. I did not say that.

123 Q. You decline, then, if I understand you, to state whether or not the firm of Kilbourn & Latta had prior to the completion of their purchase of this square, as you have stated, a refusal of the same, or, as stated in the answer, what is called a broker's refusal?

1069 A. You have stated that both ways. You said that I declined to state what I have stated, and I do not know how I could do that.

124 Q. Did you state whether you had or had not such a refusal?

A. I think I stated that they had a refusal.

125 Q. When was that refusal obtained and how?

A. I have answered that two or three times. At least I have all I intend to answer.

126 Q. I insist upon your answering the question.

A. I decline, then, to make it.

127 Q. Do you do that under the advice of counsel for defendant in this case or upon your own motion?

A. I have not heard counsel say anything.

128 Q. Have you counsel of your own present who are not counsel in the present case?

A. My attorney is here.

129 Q. Your attorney is Colonel Totten, is he not? He is here as your attorney, is he not, and not for the defendant in this case?

A. I don't know exactly about that.

130 Q. Have you been advised by either the attorney of
1070 the defendant, Mr. Wilson, or by your attorney not to answer

the question in respect to this refusal which I have asked you or do you decline to answer it upon your own motion?

A. If you tell me what that has to do with this case?

131 Q. It is not my business to tell you what any question which I ask you has to do with this case, but to ask you the question and request you to answer it.

A. Oh! I decline to answer it.

132 Q. You state in your examination-in-chief in this case something with regard to a negotiation for the purchase of this square in which the consideration offered for it was certain bonds; will you explain that transaction?

A. No; I do not think I will.

133 Q. There was a note for $32,000 given, secured upon this square, by J. M. Latta, trustee; for whom was that note given?

A. That note was given for the firm of Kilbourn & Latta.

134 Q. The firm of Kilbourn & Latta, then, if I understand you, were responsible for the payment of that note?

1071 A. They were until you bought it.

135 Q. Is not that note entered upon your books as a note given by Latta, trustee, for Sunderland, Hillyer & Stewart, and are they not charged with that note and interest upon it from the date of the note?

A. It is. We sold that property to Sunderland and Hillyer in just this way: They agreed to take that square at $65,000; they agreed to pay us—and I think you yourself made the terms—$20,000 in cash and $6,500 at one year, $6,500 at two years, and $32,000 at five years, and that $32,000 was the same $32,000 that Kilbourn & Latta, trustees, have given the first purchase.

136 Q. There never was any change of that note made?

A. There was not.

137 Q. Nor of the date of the further payments?

A. No, sir.

138 Q. The deed under which Sunderland and Hillyer claimed the deed which assured the title to Sunderland & Hillyer was the same deed which was executed by the corporation of which you have spoken to James M. Latta, trustee?

A. Yes, sir; for the consideration of $40,000.

1072 139 Q. Is there any entry upon the books of the firm of Kilbourn & Latta showing that this square was ever purchased by them?

A. I do not know whether there is or not. I do not presume there is.

140 Q. Is there not an entry upon that book showing or representing that that square was purchased from the charitable corporation of which you have spoken by George Taylor and by George Taylor sold to the firm of Kilbourn & Latta?

A. No, sir.

141 Q. You say there is no such entry?

A. I do.

142 Q. Is there any entry of that character upon any of the business books of the firm of Kilbourn & Latta?

A. No, sir.

143 Q. To whom were these $6,500 notes made payable?

A. I think to George Taylor.

144 Q. How did they become made payable to George Taylor?

A. Because we transferred the property through the books in the name of George Taylor.

145 Q. Was that not what I asked you a moment ago?

1073 A. No, sir.

146 Q. Will you show the entry in your books, so far as it relates to the connection of George Taylor with this property?

A. As that has nothing to do with your purchase and with this case in any way that I see, I decline to do that; not that I have any objection to it.

147 Q. Had anybody objected to your doing it but yourself?

A. No, sir.

148 Q. Counsel for defendant has not objected, has he?

A. I have not heard it.

149 Q. I ask you, then to, show that entry.

A. I have said I decline to do that.

150 Q. You say that there is not an entry on your book showing that this square 115 was purchased by George Taylor and by him sold to Sunderland, Hillyer, and Stewart.

A. No; I have not said that.

151 Q. I ask you that question directly.

A. I am sorry to contradict you, but when you read the notes you will find you did not.

152 Q. I ask you now whether there is or is not such an entry?

1074 A. If you make it so that I comprehend you I will try to answer it.

153 Q. I think I have made myself understood. If not, I will state again that what I wish to know is whether or not there is an entry upon the books of Kilbourn & Latta showing or purporting to show that this square 115 was purchased by George Taylor from the Institution for the Education of Colored Youth and by him sold to Sunderland & Hillyer.

A. That is the first time you asked that question, and I will see if there is such an entry.

154 Q. Will you show that entry?

A. I don't know that I have any objection to showing that entry if it does not come in between other entries of other matters.

155 Q. I desire that the book be produced to the commissioner, and that counsel for the complainants be allowed to inspect the entry.

A. I will allow the commissioner to examine this entry, as far as it is called for, and take it *verbatem;* but I decline to produce

1075 this book for the inspection of the complainants in this case; or I will read the entry and he can verify it; but I notice other matters here (looking over the book spread before him) that do not pertain to this case and which I do not propose to expose to your gaze. I decline further to produce it.

156 Q. I understand, then, that you decline to produce the book for the inspection of the counsel for complainants in reference to this entry and the context of this entry?

A. Yes; I do.

157 Q. Why was that entry made?

A. I think it was made at my instance.

158 Q. The question is, Why was that entry made?

A. As near as I can recollect in regard to that, it was made for the purpose of not giving to our employés any more of our business than was necessary for them to know. For instance, the title of lot 17, in square 158, was deeded by E. B. Morgan to John Bull, and the identical entries are posted through the books that the property was the property of John Bull and John Bull sold to Sunder-
1076 land and Hillyer. It was our habit to keep our business as entirely to ourselves as possible, for we were fully aware that we had in our employment people at different times who were disposed to know as much about our business as we did, and perhaps did not have as much discretion in keeping it.

159 Q. Is that all the explanation you have to make?

A. It is, and that is the only one applicable to these cases.

The commissioner here stated that he would examine the entries in the book offered by Mr. Olmstead, and if the parties desired him to copy them and introduce them in the case he would do so.

Mr. HILLYER: I desire to have the commissioner copy these entries.

Mr. OLMSTEAD: I can facilitate it by reading the entries and allowing the commissioner to verify them.

(The witness here begun to read from the book, the commissioner looking upon the book:)

1077 Real estate acc't. Institution for Education of Colored Youth, square 115, sold George Taylor, deed dated May 25, '72, James M. Latta, trustee, $40,000. George Taylor, to real estate account to the above square, bought of Institution for Education of Colored Youth, $40,000.

160 Q. What is the date of the entry just read?

A. The 30th day of May, 1872.

Real estate acc't to George Taylor, square 115, sold Sunderland, Hillyer & Co, deeded as above, to J. M. Latta, trustee, $65,000.

Sunderland, Hillyer & Co. to real estate acc't for the above square, bought of George Taylor, $65,000.

George Taylor to Sunderland, Hillyer & Co. for the encumbrance assumed, note of James M. Latta, trustee, dated May 1, '72, payable on or before 4 years, interest 6 per cent., semi-annual, $32,000; 2 notes to same of $6,500 each, dated May 30, '72.

(I said it was 48 hours between change of title. I see it is five days.)

(Continuing:) Payable one and two years, $13,000. That is all.

1078 161 Q. Are the readings which you made consecutive in the book?

A. They are.

162 Q. I now ask that the book be produced to the commissioner, and that counsel for the complainants be permitted to inspect these entries and the context of the same.

A. I decline to do it.

163 Q. Do you also decline to submit the book to the commissioner to be inspected by the complainants for the purpose of having the entries which you have read and which have been verified by the commissioner inspected by them?

A. I have given so much as I have of the entries of these books or this book that did not pertain to this case purely as a gratuity.

164 Q. You stated in a former examination, when I asked to whom these notes were executed, that you did not know. I mean now the two notes for $6,500, mentioned in the entries which you read. Had you at that time forgotten to whom these were executed?

1079 Mr. WILSON: I object to the witness being cross-examined as to any former examination, because the same is not pertinent to the present examination nor responsive to it.

Mr. HILLYER: Let the question be re-read.

The question was re-read.

A. I did, and I am not certain now that they were executed to George Taylor, although it is my impression that they were. I think they were executed to him and he endorsed them without recourse. That is my recollection. The books do not show.

165 Q. Who had access to your books in the months of May and June, 1872, besides the members of the firm of Kilbourn & Latta?

A. Our book-keeper.

166 Q. Any one else?

A. Well, I decline to answer that.

167 Q. Did Sunderland, Hillyer, and Stewart or either of them have access to those books?

1080 A. I don't think they did. I know of no reason why they should. They had access to all papers, accounts, statements, titles, and abstracts that pertained to their business, as well as everybody else did in regard to their particular business.

168 Q. You stated in your examination-in-chief that Sunderland, Hillyer, and Stewart had, previous to this purchase of square 115, bought ground all around it at a higher price, considering the location?

A. And the desirability of the property.

169 Q. State now what property they had previously bought around this square 115.

A. They had bought square 138, which was directly east; they had bought squares 66, 97, 112, 156, and I think quite a number of lots in square 97, which is south and west of this square. Some lots they bought in square 97, which was nothing like as well

1081 located, nothing like as valuable, they paid 40c. a foot for in cash.

170 Q. Who bought square 138?

A. Sunderland and Hillyer. I don't know but what they were bought by Thomas Sunderland; perhaps it was; one or the other were buying around there.

171 Q. You say that square 138 was — bought by anybody or Sunderland, Hillyer, and Stewart prior to the 26th day of June, 1872?

A. I testified from recollection. I will look at the account. (The witness here obtained an account book and opened it for examination.) No, they bought in square 97.

172 Q. I am talking about square 138.

A. Well, I am just going to answer it. They bought lots in square 97, in square 156, and then they bought square 115, then they bought lots in square 158, then bought square 155, then bought square 134, then bought square 195. I guess this property was bought by Thomas Sunderland instead of Sunderland &
1082 Hillyer. I will look and see when that was done. No, that square 138 was not bought until the 24th of July.

173 Q. Whereabouts is square 66 in relation to square 115?

A. Square 66 is one square north and two squares west.

174 Q. Is not square 66 between 21st and 22nd streets?

A. It is.

175 Q. Between what streets is square 115?

A. Nineteenth and Twentieth.

176 Q. Whereabouts is square 97 in relation to square 115?

A. One square west.

177 Q. And how much west?

A. About a hundred feet, I guess, or maybe one hundred and fifty.

178 Q. What had Sunderland & Hillyer bought in square 97 prior to purchasing square 115?

A. They bought the whole square.

179 Q. Square 97?

A. Squares 66, 97, and 112. You bought it yourself. You ought to remember.

1083 180 Q. I am not speaking about these others. I am speaking of square 97.

A. Sixty-six, ninety-seven, one hundred and thirteen. All were bought by you.

181 Q. You are mistaken about that again. Was square 66 bought by Sunderland, Hillyer, and Stewart?

A. I do not know exactly how that was bought. You and Stewart, as I understood it, were in partnership. Then you, Stewart, and Sunderland made another sort of partnership, and the finality was that you gave to Sunderland, Hillyer, and Stewart all of 97 and 113 and a portion of 66. I do not know exactly how that was done. I always considered it all and the same interest all the way through. I think from the first you were the only purchaser that I knew of.

182 Q. When was square 66 bought?

A. That was the first purchase you made.

183 Q. I do not want the accurate date. Was that bought in June, 1871?

1084 A. I guess you are thinking of square 93; that appears to have been bought in June, 1871.

184 Q. That is what you were thinking of when you stated square 97.

A. I beg pardon if I said 97.

185 Q. Then 93 was bought in 1871 and 66 bought before that, was it not?

A. I think so.

186 Q. And square 113 bought about the same time?

A. Shortly after.

187 Q. Prior to January, 1872, had you ever heard of Thomas Sunderland?

A. I do not know just when I heard of him. I might not. As I said before, you and Stewart bought at first.

188 Q. Do not you know that Sunderland had nothing to do with squares 66, 93, and 113?

A. I was under the impression that he had not until he commenced purchasing.

189 Q. What was the first purchase ever made by Sunderland, Hillyer & Stewart?

A. I gave that a moment ago.

190 Q. Let us have it again.

1085 A. Some time in May, 1872, as appears by this (indicating the account book from which was read the entries heretofore given).

191 Q. State the date.

A. May 17, 1872.

192 Q. What other property was purchased by Sunderland, Hillyer & Stewart before square 115?

A. There was quite a large quantity in square 97.

193 Q. State how much, exactly, in square 97.

A. I cannot. Lots 18 to 25, part of lot 10. I cannot give the number of square feet.

194 Q. Lots 18 to 25—how large were those lots?

A. Well, I should say 200 feet front on "O" street. These dates are the dates of the deeds. They may have bought or bargained for a very considerable amount of this property, as was often the case. Doubtless it might have occurred in their manner of getting deeds, for property last bought might be deeded first, as I see here

1086 in their account current the charges for the stamps on various deeds to property on the 6th of June which were not stated before. For instance, here is lot 17, in square 158, deed dated May 31st, and these other deeds antedated, and before that charges for examining titles and stamps on square 115 and lots in 158 and square 155 and 156.

195 Q. Can you now state what property, if any, immediately surrounding square 115 had been bought by Sunderland, Hillyer, and Stewart prior to this purchase of that square?

A. I cannot state more than I have.

196 Q. What was it? Repeat it, if you please.

A. I said that they had bought about there——

197 Q. Did not you say that they bought immediately surrounding square 115 or immediately adjoining square 115?

A. I don't think I stated that they had bought surrounding it; I do not think I made it as broad as that.

1087 198 Q. Can you mention any property that they had bought adjoining that square prior to the purchase of that square?

A. Well, I have mentioned square 97.

199 Q. You say that they bought lots in 97 prior to that time?

A. I have stated that two or three times.

200 Q. What did they pay for these lots?

A. They paid 40c. a foot for lot 10.

201 Q. How much did they pay for the others?

A. I think 25c. a foot; it might have been 28c. They paid cash for both, and for lots 18 to 25, in square 97, about 20 feet above grade. Lot 10 was some 10 or more feet above grade, and this square 115 was nicely on grade.

202 Q. Except these lots you mention in square 97, was *an* any other property which was bought by them previous to these purchases immediately adjoining square 115?

A. I cannot state positively. They might have bought a considerable amount of property not transferred until after and the deeds not dated until after.

1088 203 Q. You did state positively in your examination-in-chief that they bought a large amount of property surrounding it at higher prices?

A. I did, I think.

204 Q. What did you mean by it?

A. I meant just what I said. I stated that entirely from my memory and reiterated it here, and when I come to look at the records I find that the date of the deeds do not show exactly that; as I say, they may have bought this property. My impression was that they bought most of the property before these deeds are dated. It took time to fix up these deeds, and they did not stop to close a transaction.

205 Q. At the time you bargained for and sold this property to Sunderland, Hillyer, and Stewart did you tell them who had previously owned it?

A. I do not think we did. I am sure I did not. I was not in the habit of telling them or anybody else things that did not pertain to them.

1089 206 Q. Why did you charge commissions to the Institution for the Education of Colored Youth on the purchase of this property by you from them?

A. I have not stated that we did, have I?

207 Q. I will ask you if you did?

A. I think we did.

208 Q. I now ask you why you did it?

A. I do not know now why we did it; probably because we could and they were willing to pay it. We were at a very considerable expense in getting the title to that property—somewhere from $500

to $1,000, and may be more, in hunting it up, &c. It was our habit sometimes to get the price on a piece of property and see if the parties would sell it for that price and allow a commission, and then buy it in that way.

209 Q. You have said that Sunderland, Hillyer, and Stewart took this property in about five minutes after it was offered to them?

A. I do not think it was longer than that.

210 Q. Did you ever hear either of them speak of this square prior to that time?

1090 A. I do not know whether I did or not. I may have.

211 Q. You said you considered them shrewd operators. Did you consider this an example of their shrewd operation in real property?

A. I did and do still. If they had attended to it and kept their business in as good shape as when we managed it I think they could have made some money out of this property.

212 Q. You say you had an open order to purchase lots in square 158, if I understand you, at 50c. a foot?

A. Yes, sir.

213 Q. Any and all lots?

A. Yes, sir.

214 Q. Were lots in square 158 all of the same value?

A. No; I do not think they were.

215 Q. Were they nearly the same value?

A. Comparatively of the same value. The lots on Massachusetts avenue were, at the same number of feet, perhaps a little more valuable than those on "N" street. Those lots on Massa-

1091 chusetts avenue were very deep, and those on "M" street, with one exception, quite shallow, so that it evened the matter up. They were quite desirous of buying that whole block if they could get it. I went to Philadelphia to try to negotiate for the largest portion of it—lots 13, 14, 15, and 16.

216 Q. The price was 50c. a square foot?

A. Yes, sir; 50c. a square foot.

217 Q. That is the method in which real estate is sold in the city of Washington, is it not?

A. Yes, sir.

218 Q. Were the lots on Massachusetts avenue, in that square, all of the same depth?

A. There were but two lots on Massachusetts avenue. One was about 200 feet deep.

219 Q. I am speaking of the whole square now.

A. No, you are not. You said lots on Massachusetts avenue.

220 Q. I am speaking of lots fronting on Massachusetts avenue all being of the same depth. Do you mean to say that there are only two lots facing on Massachusetts avenue?

A. If you will let me answer you will not have to enlarge so much. Lot 17, in square 158, I think, is about 200 feet deep, and part of lot 21, I think, is about one hundred and forty odd feet deep, and lot 3, which fronts both on Massachusetts avenue

1092 and "N" street, is about 230 or 240 feet deep. This I am

testifying to from recollection. I may not be accurate, but it is pretty near it, though.

221 Q. Will you answer my question whether lots in square 158, which front on Massachusetts avenue, are all of the same depth, or nearly of the same depth?

A. I have given you the depth as nearly as I could.

222 Q. You have mentioned the depth of all lots fronting on Massachusetts avenue in square 158?

A. I have.

223 Q. How many lots are there fronting on Massachusetts avenue in square 158?

A. Three.

224 Q. What is the shape of that square? Is it not one of the squares which is cut by an avenue so as to make its width very much less on the east end than on the west end?

A. Yes, sir.

225 Q. What is the width of the square on the west end?

A. I should think about 150 feet.

226 Q. And how much on the west end?

A. Well, I should think five or six hundred.

1093 227 Q. And it tapers all the way, does it not, from the western boundary down to the eastern boundary?

A. It does.

228 Q. The lots upon that square all vary in depth, do they not, in correspondence with the difference of width of lots indicated by the dimensions which you have given?

A. No; I do not know what you are getting at. The plat book will show. If you are testing my memory as to the depths of lots in the city I——

229 Q. What was the difference in value in 1872 between a lot in that square fronting on Massachusetts avenue of 200 feet depth and a lot of 100 feet depth?

A. I should think there was 30 per cent.

230 Q. I am not asking the absolute difference in price, but the relative difference—the proportional difference of one price to another?

A. Thirty per cent.

231 Q. And you say that Sunderland, Hillyer, and Stewart gave you an open order to buy any lots in that square at the round price of 50c.?

A. Yes, sir; they did not give us an open order. I do not mean it in that sense exactly. I mean they offered to give 50c. for anything we could get in that square.

1094 232 Q. Then if you had bought the whole of that square at 50c. Sunderland, Hillyer, and Stewart, according to agreement, would have been bound to take it from you at that price. Is that what you mean to say?

A. I do; not legally bound, as there was no writing to that effect.

233 Q. But they were bound legally, provided that they lived up to their contract, if I understand you?

A. That was their agreement.

234 Q. Did you in that transaction consider them shrewd real estate operators?

A. I did. I think they thought they were getting it cheap at that price. They found they could not get square 159.

235 Q. What was the difficulty about 159?

A. Somebody else in ahead of them.

236 Q. Could not they have bought it had they been willing to pay for it?

A. I don't think they could have bought it at any price.

237 Q. Who bought square 159?

A. Mrs. Attorney General Williams.

238 Q. And you think it could not have been bought by Sunderland, Hillyer, and Stewart at any price?

1095 A. I think not. I know I was after it pretty hard to get hold of it, but could not, and I think I was as lively in the business as they.

239 Q. It was not, then, as I understand you, a question of price, but a question of getting it at any price?

A. Well, it was a good deal of that, and a question of getting property around there at all. There were a great many more buyers than sellers in the market.

240 Q. In reference to this square 158, was the firm of Kilbourn and Latta the agents or brokers of Sunderland, Hillyer & Stewart?

A. No, sir; Sunderland, Hillyer and Stewart knew that we owned lots in that square which they bought, or some members of the firm did. I do not know whether Senator Stewart did. I never had much conversation with him.

241 Q. You were not, then, the agents of Sunderland, Hillyer & Stewart for the purchase of any of this property in square 158?

A. No, sir.

242 Q. Which of those lots in square 158 was first sold to Sunderland, Hillyer and Stewart?

A. I think part of lot 9. It was an almost simultaneous sale—all of it.

243 Q. Did the firm of Kilbourn & Latta ever own square 155?

1096 A. They were interested in the ownership of it.

244 Q. For how long?

A. I do not know; I think about a week or 10 days.

245 Q. Who were interested with them in its ownership?

A. Charles A. Eldridge bought on a joint account of Charles A Eldridge and the firm of Kilbourn and Latta. He was to furnish the money and Kilbourn & Latta to have 5 per cent. on the sale, brokerage, and we divided the profits.

246 Q. Did you know of any one interested with Eldridge in the purchase besides the firm of Kilbourn and Latta?

A. No; I do not think that I did.

247 Q. Is there anything in the books of Kilbourn & Latta showing the purchase of this square by themselves in connection with Mr. Eldridge?

A. There is not. There is another instance where we did not divulge all our business to everybody.

248 Q. Did you pay this $2,000 of profit, which you say you made, to Charles A. Eldridge?

A. I have stated so; yes, sir.

249 Q. Did you pay it in money?

1097 A. Well, Colonel, I have no hesitation in answering these questions, but I do not know that it is a matter that pertains to your business in any way, and if you are going to ask any more I decline to answer; but I say that we did pay it in money.

250 Q. At what time did you pay him the $2,000?

A. I decline to answer anything further in regard to it.

251 Q. Is there any entry on your books showing the payment of $2,000 on account of that square?

A. I decline to say anything further in regard to it. No; I do not decline; I will say there is that entry upon the books.

252 Q. Will you show it?

A. Well, I will if I can find it; but it is not charged to his account; but, if I remember rightly, charged to the expense account (the witness here turning to a page in the account book); paid on the 11th day of June, 1872.

253 Q. Will you produce the book and show the entry?

A. Oh, no; I have gotten through. I gratified you to that extent, but I will not, unless I am compelled to, let you run through the book.

254 Q. Then you decline to produce the book showing that payment?

A. Yes.

1098 At this point the counsel for the complainants requested that the examination be adjourned until such time as shall give an opportunity for procuring the opinion of the court in respect to the necessity of the witness answering the questions which have been propounded to him and which he has declined to answer, and asked that the examination be adjourned one week from to-day. It was accordingly agreed that the further taking of testimony be postponed to the time above indicated.

WM. T. S. CURTIS, *Examiner.*

FEBRUARY 13TH, 1882.

Met to-day at the office of J. F. Olmstead, New York avenue, Washington, D. C., when the further cross-examination of Mr. Olmstead was continued.

Present: Messrs. Hillyer and Ralston, for the complainants; and Mr. Wilson, for defendant Latta, and Mr. Totten, for defendants Kilbourn and Olmstead.

1099 Before beginning the examination of the witness the following stipulation was agreed upon, namely:

Stipulation.

It is now stipulated between the counsel for the complainants in the case in which this deposition is taken and the counsel for the defendant in said case and the counsel for the defendant in the case pending between the said complainants and Kilbourn and Olmstead in the supreme court of the District of Columbia and by the counsel for the complainants in the said last-named case that this deposition and such other depositions as may be taken in the case in which the present deposition is being taken on behalf of the defendant shall be used as testimony in the said case pending in the said supreme court of the District of Columbia; and that, in view of the fact that said depositions are to be so used, it is further stipulated that the counsel for the defendants in the said cause pending in the said court of the District of Columbia shall be at liberty to ask such questions-in-chief or otherwise as he may desire pertinent to the issue in said last-named case, and the counsel for the defendant in
1100 the said case in which this deposition is being taken shall also be permitted to ask such questions of the witness as he or they may choose, subject to any legal objection thereto.

Cross-examination of J. F. OLMSTEAD (resumed):

By Mr HILLYER:

255 Q. Please produce the letter written by Mr. Latta from Altoona in May, 1872.

The witness here handed to Mr. Hillyer the letter of Mr. Latta written from Altoona and dated May 26th, 1872, which was read by Mr. Hillyer and by him handed to the commissioner, with the following remark:

Mr. HILLYER: There is nothing private in that letter, and I ask that the commissioner make a copy of it and introduce it entire into the testimony.

Accordingly the letter referred to is made a part of this deposition and attached hereto, marked "J. F. O. No. 1."

The WITNESS: I wish to say, in regard to that letter, that
1101 in my examination in the case of Sunderland & Hillyer against Kilbourn and Olmstead, pending in this District, my answer to a question in reference to this same letter reads this way, to wit:

"Q. Either bring the letter or refuse to bring it, stating that you have it, but do not care to produce it. Please do one of two things, that we may understand precisely what your position is.

"A. There is nothing in the letter pertinent to this case which was not produced in the other case. You have seen the copy in the other case, and that is all that will be produced in this. The remainder is private matter."

I think that was my answer to the same general examination in this case. I may have used the language that there was nothing in

this letter relating to this business, or something of that kind. Now, the only thing that is different from that is that there is a clause in this letter which was left out in the suit of Kilbourn and Olmstead against Latta, referring to the sale of square 115. A clause in that letter was stricken out which referred to some other private matter,

Now, I wish my answer to stand in this case as it does in the
1102 case of Kilbourn and Olmstead against Latta. When I gave that answer I had reference to another letter which was produced, in which a clause was stricken out which was entirely outside of any case. It was purely a personal letter, and I had that letter in mind when answering in this case.

256 Q. The extract of this letter which was introduced in the case of Kilbourn and Olmstead against Latta, and to which you have referred in a previous examination in this case, did not contain the words "Hand Taylor a copy of his letter of instructions to us about sale of 115, that he may have it fresh in his memory, if questioned," did it?

A. I do not think it did. I do not remember, however. I have not looked over the testimony nor this letter until within the last two or three days.

257 Q. Will you produce the journal, Mr. Olmstead, containing an account of the business transactions of Kilbourn and Latta in 1872?

A. I will produce it in accordance with this order of court for any entries in regard to this business.

258 Q. What was the first piece of property which Sunderland, Hillyer and Stewart bought in 1872?

1103 A. I am unable to say what is the first piece of property, either from the books or from the accounts.

259 Q. I do not care which was the first piece of property. I mean the first piece of any kind. I am not getting at the actual piece bought. I want to commence at the beginning of purchases of any kind and take them in order.

A. I will explain in my answer now: You want the first entry on the books and I can give you that very readily; but whether that was the first piece I doubt. The first piece of property appears by the account current here in square 156.

260 Q. Will you turn in your journal to the first entry made in reference to that square?

A. The first entry in regard to that square is on the 27 May, 1872.

261 Q. Just read the entry, will you, please?

A. Real estate account; Hallet Kilbourn, trustee for square 156, sold Sunderland, Hillyer and Co., $90,429.90.

262 —. Is there any other entre made in connection with that square there or made anywhere in connection with this square?

1104 A. No, sir; well, there are other entries—the closing entries of that account.

263 Q. Is that the first entry which appears in your books in reference to square 156?

A. In this matter; yes, sir.

264 Q. I am not asking in this matter. I am asking about the first entry which appears in any books in reference to square 156.

A. Your first question was, What was the first piece of property sold Sunderland, Hillyer and Co.? I answered, Square 156. You wanted the first entry and now I have given it to you.

256 Q. I wish you would understand my question, which I intended to be plain—that is, I want the first entry which appears in your books anywhere refer-ing in any way to square 156.

A. There is, I presume, another entry here when that property was purchased for the account of the Real Estate Association. I do not know just exactly where it is.

266 Q. Turn to that entry, if you please. That is the entry I want.

A. The first entry in regard to this square is October,
1105 1871. I think that is the first entry. I will read. Real estate to account of Thomas Young, square 156, sold Hallet Kilbourn, trustee, October, 1876, $65,748.00.

267 Q. Is there any entry for commissions upon that sale?

A. I should say there was.

268 Q. Well, read the entry, if you please.

A. He paid us $4,673.00 for selling it.

269 Q. To whom were those commissions charged?

A. Charged to Thomas Young, the man we sold it for.

270 Q. Is there any other entry intermediate between the one which you have last read and that which you first read relating to the purchase by Sunderland and Hillyer?

A. I do not think there is.

271 Q. Is there any entry of a commission in relation to the sale to Sunderland and Hillyer recorded in the first entry which you read? If so, I wish you would read it?

A. I think there is. I do not think that we sold it for nothing. Yes, sir—$4,521.50.

272 Q. Read that entry.

A. That is a commission account—credited with $4,521.50.
1106 273 Q. To whom was that sum charged?

A. Charged to the Real Estate Association.

274 Q. What is the date of that entry?

A. The same date as the entry I gave before—May 27, 1872.

275 Q. Who at that time composed the Real Estate Association?

A. I do not know what that has to do with this case.

276 Q. I say, as I have said before, that is not for you to judge.

Mr. TOTTEN: What did you want to know that for?

Mr. HILLYER: I cannot stop here to argue questions of law. I simply want my questions answered. Of course, if I did not think I was entitled to the answer I should not ask it, but I may be mistaken.

Mr. TOTTEN: Well, do you want to have the names of people go down on this record who have nothing to do with this case?

Mr. HILLYAR: Yes, sir; if I think it has something to do with this case; otherwise I would not, undoubtedly.

1107 Mr. TOTTEN: There is no proviso about that in this order. There is no use putting these names in here.

Mr. HILLYER: Mr. Olmstead put them in the record of the other case.

Mr. TOTTEN: I think not. What case?

Mr. HILLYER: Why, in the case of Kilbourn and Olmstead against Latta.

Mr. WILSON: Col. Hillyar, suppose you specify such persons as you think may be, to know whether they had an interest in association or not. If you pardon me for a single moment, I will say that I do not want to interpose an objection to anything that is within the bounds of reason in this case, but I do not want a lot of utterly irrelevant testimony brought into the case.

Mr. HILLYER: I assure you that so far as I am concerned I do not want to bring them in, but they are in the printed record

1108 in this case, and that is what I want to get at.

Mr. WILSON: I cannot see, for my part, the relevancy of this; I confess I do not.

Mr. HILLYER: I guess you will see it after awhile.

Mr. WILSON: You may be able to show me where it is relevant; you may be able to show the court where it is relevant; but I cannot see it now, I confess. This square is not in controversy in this suit. I ask you, is there a single foot of this square in controversy in this suit at present?

Mr. HILLYER: No, sir.

Mr. WILSON: Well, if it is not in controversy at present I do not see how you make the transactions of this firm relevant to the issues of this case.

Mr. HILLYER: I do not know whether I can explain it all beforehand, but I think it not only relevant, but very important.

1109 Mr. WILSON: If Mr. Olmstead should decline to answer this question and you were to go before the court to ask that it compel him to answer, I take it you would be compelled to show the relevancy of this testimony to the case, and it is not an unreasonable request that we should ask you to point out in some way or other some indications that it has some relevancy to this case, in order that we may avoid the necessity of going to court and taking instructions on the subject. I do not want to do that. I want to accommodate and not to oppose anything that is pertinent to this case, but I do not want to lug in a lot of stuff that cannot affect the case in any way whatever.

Mr. HILLYER: I can only say this—that I insist upon the question and that I hold we are entitled to show the facts in regard to each one of our purchases under the allegations in the bill and the denials in the answer.

1110 Mr. TOTTEN: There is not a word said in that bill about this square 156.

Mr. WILSON: There is nothing in the bill about square 156.

Mr. TOTTEN: I wish to say, Mr. Commissioner, that I am in favor of having this question answered if Mr. Hillyer wants to introduce irrelevant and immaterial matter into this case; but we here enter

our protest against going in matters that do not relate to the issues involved in it, and if he wishes to put it on the record let him do it.

Mr. WILSON: I enterpose an objection to it because it is immaterial, irrelevant, and has no relation whatever to the issues of this case or to any other case that has been referred to in the stipulation entered into between counsel.

The question was re-read.

Mr. HILLYER: I waive that question for the present to ask another. I ask the witness if he will produce an original agree-
1111 ment made between Kilbourn and Latta and Olmstead in the spring of 1873, purporting to set forth the trusts upon which property was held which stood in the name of one or the other of the members of that firm, a copy of which was introduced in evidence by you in the case of Kilbourn and Olmstead against Latta?

A. I do not think I have that.

279 Q. What did you do with it?

A. My recollection is that it was borrowed or lost, I do not know which. I lost sight of it during that case, and I do not remember to have seen it since.

278 Q. Have you it now in your possession?

A. I do not think I have.

279 Q. Do you know when you last saw it?

A. I do not.

280 Q. Have you any recollection of having given it to any one?

A. I think it was left in one or the other of the offices where we took testimony; that is my recollection, and it is the last I have seen of it.

281 Q. Have you seen it since?

A. I have said that my recollection is that that was the last I saw of it.

1112 282 Q. Is the copy which was introduced in evidence by you, and which is contained in the record of the case of Kilbourn and Olmstead against Latta, a correct copy of that agreement?

A. It is.

283 Q. Does that agreement show who the persons were who composed the Real Estate Association?

A. No.

284 Q. Does it purport to show who the persons were who composed the Real Estate Association at the date of the agreement?

A. No.

285 Q. Did you not testify in that case that it did?

A. No.

286 Q. Did you not state in that case in the testimony the terms at which Kilbourn and Latta became purchase-s and thereby became interested in the Real Estate Association?

A. I may have done that.

287 Q. If you did, did you state it correctly?

A. I apprehend that I did.

289 Q. Did not your testimony in that case show that all the purchases by the firm of Kilbourn & Latta of interest in the Real Estate Association was made subsequent to the 1st of January, 1873?

A. No, sir.

290 Q. What one, if any, shown was made prior to that date?

1113 A. All but one, if it shows anything. I don't think it shows anything.

291 Q. You state, if I understand you, that square 156 was sold to Sunderland, Hillyer and Stewart by the Real Estate Association?

A. I have stated that; yes, sir.

292 Q. Does the entry in your book show a sale by the Real Estate Association to Sunderland, Hillyer and Stewart?

A. It does.

293 Q. Will you turn to that entry?

A. I have read it once or twice this evening.

294 Q. Just re-read it until I see if I can understand it.

A. Real Estate Association account to Hallet Kilbourn, trustee, square 156, sold to Sunderland, Hillyer & Co., $90,429.90.

Sunderland, Hillyer & Co. to the Real Estate Association, for the above square, paid Hallet Kilbourn, trustee, $90,429.90; Hallet Kilbourn, trustee, to Sunderland, Hillyer & Co., for the incumbrance assumed, $52,000; accrued interest, $1,405; note, $17,000; commission account, $4,521.49; cash, $15,497.64; deed and acknowledgment, $5.50. Another entry here is Cash in full, Sunderland, Hillyer & Co., for purchase of square 156, $15,497.64.

1114 295 Q. What was the profit made by the Real Estate Association, according to your entries which you have read, upon the purchase and sale of square 156?

Mr. WILSON: The question is objected to as immaterial and irrelevant.

A. The books do not show.

296 Q. The difference between the purchase price by the Real Estate Association and the sale price to Sunderland, Hillyer, and Stewart, if I understand it correctly, as shown by your books, was something like $27,000. Is there any entry in your books crediting that difference, less commissions, to the Real Estate Association?

Mr. WILSON: That question is objected to because it is immaterial and irrelevant. This square 156 not being in controversy in this case or any other of these cases, and the witness having testified that the purchases made by the Real Estate Association from Mr. Young were made about a year before the sale to Sunderland, Hillyer, and Stewart, the profits that may have been made in that transaction are not involved in this controversy, nor is it material whether

1115 it appears upon the books of Kilbourn and Latta or not.

A. I have read all the entries in the books in relation to that purchase by the Real Estate Association and the sale to Sunderland, Hillyer and Co.

297 Q. There is, then, no entry crediting the difference which I

have mentioned, as I understand you, in your books to the Real Estate Association?

A. I have not said that at all. You would not have asked that question if you had apprehended my answer to the other question.

298 Q. I ask you now distinctly if there is or there is not such an entry in your books?

A. I only answer that I have read every entry, as I believe, connected with that property up to that time from its purchase, except it may be some small entries or items of tax, &c., paid intermediate. There may be some such entries as that that I do not know of.

299 Q. Was that $27,000, less commissions, paid to the Real Estate Association?

A. I have not said anything about any $27,000.

Mr. WILSON: The question is objected to because it is immaterial and irrelevant; that it is no concern to these complainants
1116 what was done with any moneys that were derived from the sale of property to or for the Real Estate Association.

300 Q. I wish to know distinctly whether or not the Real Estate Association were or were not either paid or credited upon your books with the amount of difference between the purchase price of that property named in the entry, prior in date to that read by you, and the sale of that property in the entry last read by you?

A. Well, Colonel, you apparently do not understand book-keeping, for the first entry credits the property to the Real Estate Association and the last one charges it to you, and the difference, of course, stands to the credit of the Real Estate Association.

301 Q. Is there any entry on your books crediting it to the Real Estate Association?

A. Well, I cannot say anything more about it. I have read every entry in the books with reference to it, and have explained as fully as I can.

302 Q. Have you a ledger in connection with this journal?

A. Yes, sir.

303 Q. In that ledger is there a separate account of Real Estate Association?

1117 A. There is no account that I have not read here.

304 Q. I ask you if there is a separate ledger account in regard to the Real Estate Asso.?

A. Yes, sir.

305 Q. I ask you to produce the ledger and turn to that account for the purpose of ascertaining whether or not there is a credit in that account of the amount of profit upon this purchase and sale?

A. There is nothing in that ledger that I have not read. I supposed that any one knew that a ledger was simply a column of figures taken from the journal, without any explanation whatever.

306 Q. Will you produce the ledger account of the Real Estate Association?

A. Yes; and you may read it if you want to.

The witness here handed to Mr. Hillyer the ledger referred to, and

the latter made an examination of the same at the point indicated by witness.

307 Q. You have no ledger account with the Real Estate Association by that name, have you?

A. You have been reading it for some time.

308 Q. I ask for the ledger account of the Real Estate Association. I was shown an account of Hallet Kilbourn, trustee.

1118 A. That is the Real Estate Association.

309 Q. I read the journal entries as Hallet Kilbourn, trustee. I now ask you did the firm of Kilbourn & Latta ever pay to the Real Estate Association the difference between the purchase and sale price of that property?

Mr. WILSON: The question is objected to because it is immaterial and irrelevant.

A. I have read the entries five or six times. I have shown the ledger and you have examined it, and that is all there is in regard to that matter. I have stated that the first entry shows this property charged to the Real Estate Association, and the next entry shows the credit of the sale for the Real Estate Association. I will state further that the balance at that time stands to the credit of the Real Estate Association.

310 Q. I wish you would answer my question. The question will be re-read.

The question was re-read.

A. I cannot make any other answer.

311 Q. The question is very plain, and I insist upon an answer?

A. Well, Colonel, I have done my best. I do not know of anything farther that I can do.

1119 312 Q. I understand you, then, that you cannot tell me whether the firm of Kilbourn and Latta ever paid to the Real Estate Association the profits, as shown by your books, arising from the purchase in 1871 and the sale to Sunderland, Hillyer and Co. in 1872 of square 156?

A. I presume that the profits arising from the sale of that property went into the purchase of other property for the Real Estate Association, but I do not know. They were pretty large buyers in real estate.

313 Q. If it went into the purchase of other property for the Real Estate Association, would it not appear on your books?

A. I presume so.

314 Q. What interest, if any, had the firm of Kilbourn and Latta in the Real Estate Association at this time? I mean in May, 1872.

A. We were a part & parcel of the Real Estate Association. It was a sort of an arrangement that we had with several parties, and it was proposed to be gone into by Judge Sunderland in regard to one piece of property. It was that we were to handle the property, buy and sell it and get our commissions and divide profits.

315 Q. What do you mean when you say that Kilbourn
1120 and Latta were to divide the profits? Do you mean that they were to have one-half the profits?

A. Yes, sir.

316 Q. Then you were entitled to one-half the profits on the sale of square 156?

A. Yes, sir; and got it, too.

317 Q. Did all the property standing on your books in the name of Hallet Kilbourn, trustee, belong to the Real Estate Association?

A. I think it did.

318 Q. Was there any change in the interest of the Real Estate Association between the month of May, 1872, and the month of March, 1873?

A. Well, I will not say that; I do not know whether there was or not.

319 Q. I mean to your knowledge?

A. Well, I do not know what you mean by change.

320 Q. I mean any transfer of any interest from one person to another in that Real Estate Association between those months?

A. No; I think there was not.

321 Q. Is the account of Hallet Kilbourn, trustee, balanced in your ledger?

A. Yes, sir.

322 Q. Is there any credit upon the one side or the other?

1121 A. I do not know whether there is or not. There was a very large amount of property on hand which cost a great amount of money, and some of it stands to the credit of it yet, which I hardly expect to get square on.

323 Q. What was the next piece of property bought after square 156?

A. By Sunderland?

324 Q. Yes; by Sunderland, Hillyer and Co.?

A. Lots 18 to 25, in square 97.

325 Q. What is the entry in regard to that? Read it, if you please.

A. Real estate account, J. F. Woolard, lots 18 to 25, sq. 97, sold Sunderland, Hillyer & Co., $4,039.70; Sunderland, Hillyer & Co., to real estate account to the above lots, J. F. Woolard, commission account, $161.10; cash, $3,878.60.

326 Q. Were there commissions charged to any one in that transaction?

A. I read that just now.

327 Q. Who is it charged to?

A. I read that: J. F. Woolard, commission, $161.10; cash, $3,878.60; account balanced May 27th, 1872.

328 Q. Which was the next piece of property that was bought?

A. The next was part of lot 10, square 97.

329 Q. Read the entries, if you please.

A. Real estate account, N. W. Beveridge, part of lot 10,

1122 square 97, sold Sunderland, Hillyer & Co., $1,570.25; Sunderland, Hillyer & Co., in account for the above lots, N. W. Beveridge, to Sunderland, Hillyer & Co., James M. Latta's note, dated

May 25, 1872, payable in two yrs., interest 6 per cent., payable semi-annually, $1,200.

Commission account:

Commissions & deed, $84.00; cash, $296.25.

330 Q. To whom were those commissions charged?

A. You ask useless questions. If you paid attention to the reading of this record or looked at the book carefully you would know.

331 Q. As you say, I am not a very good book-keeper.

A. I read it as charged to Beveridge.

332 Q. What was the next piece of property which was bought by Sunderland, Hillyer & Co.?

A. Square 115.

333 Q. I believe you have already read all the entries with reference to square 115, except the entry in regard to commissions?

A. Institution for the Education of Colored Youth is charged with $1,000 commissions.

334 Q. What is the next piece of property which was bought by Sunderland, Hillyer & Co.?

A. The next is lots in square 92.

335 Q. I am speaking now of lots purchased by Sunderland, Hillyer & Co. Did Sunderland, Hillyer & Co. purchase lots in there, too?

1123 A. Real estate account, Jane Hanney, lot 7 and lots G, H, I, K, L, M, N, in subdivision of lots 45, 46, 72, sold Sunderland, Hillyer & Co., dated 1872, to James M. Latta, trustee, $10,565.10. The next is Sunderland, Hillyer & Co., to real estate account for above lots, Thomas Young sold to Sunderland, Hillyer & Co., dated May 23, '72, James M. Latta, trustee, notes payable semi-annually, interest 6 per cent., $7,043.40; commissions and deed, $334.62; cash, $318.08.

336 Q. What was the next piece of property bought by Sunderland, Hillyer and Co.?

A. The next was lot 17, in square 158, real estate account to Kilbourn & Latta, lot 17, in square 158, deed dated May 31, 1872, to James M. Latta, trustee.

337 Q. Will you allow me to look at that—at that entry, if you please?

The witness here passed the book to Mr. Hillyer, who inspected the same at the point where the witness had just read from.

Mr. Hillyer: What is the next piece of property purchased by Sunderland, Hillyer & Co.?

A. The next entry is the purchase of square 155. Real estate account to George Burgess, square 155, sold to Sunderland,

1124 Hillyer & Co., deed dated June 7, 1872, James M. Latta, trustee, $72,970.30; Sunderland, Hillyer & Co., to real estate account for the above square, bought of Burgess & Orme, commission account, $5,243.84; cash paid in full for first note and accrued int., $10,026.81; paid Geo. Burgess, $2,667.00; examin'g title, $63.00;

stamps & deed, 13.50; recording deed, $1.50; sundries, $4.00; total, $13,070.08.

338 Q. Are there any other entries in your book in reference to that square—say between the first of May and the last of June?

A. No, sir.

339 Q. What is the next piece of property purchased by Sunderland, Hillyer & Co.?

A. There is another entry, but there is no reference to that square. As I testified the other night, there is an entry where we paid to a gentleman who was interested in it—well, here it is, the very next entry: Expense account of Mr. Eldridge, $2,000.

340 Q. Read the entry as it is.

A. That is exactly what I am doing. Do you want to see it?

341 Q. No; I mean to say that you give the language of the entry and not your own language.

A. I am giving the entry in full. The next purchase is lots in square 134: Real estate account to A. P. Fordan, lots 27 to
1125 49, square 134, James M. Latta, trustee, $14,417.65; A. P. Fordan to Sunderland, Hillyer & Co., James M. Latta, trustee; three notes, dated June 1st, 1872, for $3,000, payable in one, two, and three years, interest at 6 per cent., payable semi-annually; commission account, $417.14; stamps, $15.00; cash paid to Freedman's Savings and Trust Company, $3,517.45.

342 Q. What is the next purchase made by Sunderland, Hillyer & Co.?

A. The next is the purchase of lots 2, 3, 15, and 16, in square 68. Real estate account to George W. Riggs, deed dated May, 1872, James M. Latta, in fee, Latta's notes, payable in three years, interest at 6 per cent., payable semi-annually, $4,879.38; commission account, $186.

343 Q. What is the next?

A. Real estate account to lots in sq. 195, bought of George W. Riggs lots 11 to 25, J. M. Latta, in fee, $52,500, sold to Sunderland, Hillyer & Co., Latta's notes date- June 3d, 1872, payable in three years, interest 6%, payable semi-annually, $40,000; commission account, $1,500; cash paid J. G. Barritt, $11,000.

344 Q. What is the next?

A. Real estate account to Henry Willard for all of square 151 except lots 1 to 16, inclusive, and 20, 21, 22, 25, & 26, James
1126 M. Latta, trustee, sold to Sunderland, Hillyer and Co.; commission, $661.61; stamps, &c., $24.00; cash to balance account, $4,309.04; notes of Latta, date- June 4, 1872, payable, with interest at 6%, semi-annually.

345 Q. What is the next?

A. Real estate account to Kilbourn, Latta, & Olmstead, west half of lot 9, square 158, $2,836.50, sold Sunderland, Hillyer & Co., incumbrance assumed, and notes given of James M. Latta, trustee; interest 6 %, $1,600.

346 Q. Any further entry about that purchase?

A. No.

347 Q. Go on with the next.

A. Real estate acc't — Kilbourn & Latta, lot 10, sq. 158, sold to Sunderland, Hillyer & Co., notes of James M. Latta, payable in three years, interest 6 %, payable semi-annually, same being for incumbrance assumed by Kilbourn & Latta, $2,500.

348 Q. What is the next?

A. Real estate acc't to Kilbourn & Latta, west 25 ft., lot 21, sq. 158, dated June 11, 1872, James M. Latta, trustee, sold Sunderland, Hillyer & Co., notes for encumbrance assumed, payable in 2 & 3 yrs., interest 6 %, payable semi-annually.

349 Q. What is the next?

1127 A. Lot 3, square 158, sold Sunderland, Hillyer & Co., James M. Latta, trustee, deed dated May 28, 1872; real estate accounts P. H. Ray, $5,424; commission, $250.00; cash, $1,550.

350 Q. What is the next?

A. Real estate acc't to Johnson & Stewart, lot 3, square 92, $5,000, notes date- May 31, 1872, payable in two years, interest 6 per cent. per annum, payable semi-annually, $3,500; commission, $178; cash, $1,300.

351 Q. Next?

A. Real estate acc't to Geo. W. & Jno. S. Hopkins, sold to Sunderland, Hillyer & Co., James M. Latta, trustee, two notes, $2,261 each, dated June 18, 1872, interest 6 per cent., payable semi-annually; cash, $2,202.24; lots 3, 4, and 5, in sq. 167, for $6,724.86.

352 Q. Were there commissions charged on the sale of that square?

A. No, sir; they would not pay any; I do not remember the circumstance; that is the only instance in the transaction of Sunderland and Hillyer, as far as I remember, where commissions were charged to them.

1128 353 Q. What is the amount of the commission?

A. $344.70. The regular commission was $339.20 and the deed of trust and acknowledgment $5.50.

354 Q. What is the next?

A. Real estate account to Kilbourn & Latta, lot 8, sq. 158, sold to Sunderland, Hillyer & Co., $4,410.00; encumbrance assumed on square being two notes of $1,000 each, both payable in two years, 6 per cent. interest, payable semi-annually.

355 Q. Any further entries?

A. No, sir.

356 Q. In lot 17, square 158, there is an entry of a sale purporting to have been made by Kilbourn, Latta, and Olmstead to Sunderland, Hillyer & Co. Have you an entry in your book showing the purchase by Kilbourn, Latta, and Olmstead of that lot?

A. I have and read it in the examination.

357 Q. I wish you would turn to it and read it now.

A. Real estate to E. B. Morgan, lot 17, square 158, sold Kil-
1129 bourn & Latta, deed dated May, 1872, to John Bull, $5,000; cash, $4,800.

358 Q. You have stated that the firm of Kilbourn, Latta and Olmstead, in the year 1872, was engaged in the business of buying and selling real estate. Do your books show the parcels of real estate bought by the firm during the year 1872?

A. They show some of them.

359 Q. Do they show all of them?

A. No, sir.

360 Q. In what name were the accounts kept of the purchases made by Kilbourn, Latta, and Olmstead?

A. Most of them were kept in that name.

361 Q. Have you an account in your books of the firm of Kilbourn, Latta and Olmstead in relation to the purchase by them of real estate in the year 1872?

A. I have.

362 Q. Will you turn to that ledger and that account and state what parcels of property were bought by that firm in the year 1872?

A. I am unable to do it; the ledger does not show.

1130 363 Q. Can you state from memory what other property was bought in the year 1872 by the firm in the northeastern part of the city besides that in respect to which you have the entries already read?

A. Well, I can state a good many pieces, I guess, if it is necessary and pertinent to this case.

364 Q. Have you no way of stating them all.

A. No, sir; they bought lots in squares 49 and 69, lots 72, 70, 99, 203, 204, 160, 241, and that is all I remember now.

365 Q. In the case which I have referred to, of yourself and Kilbourn against Latta, did you make out a list of all the property which was purchased by the firm of Kilbourn, Latta and Olmstead during its existence?

A. I made a list. I do not know whether it was all the property that was purchased.

366 Q. Did it purport to be a list of all the property purchased?

A. I do not know now whether it did or not. It will show for itself.

1131 367 Q. What is the first entry on your books of any kind, in relation to square 115—I mean upon the books of Kilbourn and Latta?

A. I read that twice to-night and three or four times the other night.

368 Q. There is no entry, then, in reference to this square upon your books prior to that?

A. No, sir.

369 Q. You have stated in the answer which you have put in, in the case pending in this District, that the firm of Kilbourn and Latta had a refusal of this square. Will you explain how that refusal was obtained?

A. Well, it was obtained the same as any refusal. They agreed to sell the property for so much money and we agreed to take it.

370 Q. When was it obtained?

A. My recollection is that it was—well, I am indistinct about that, as I said the other night. It might be six weeks and it might be three months. There was a considerable time elapsed after

1132 they had agreed to take the price, $40,000, and the perfecting of the title. I have forgotten what it was. I know I went t

New York twice to see an old Quaker over there to straighten out the title. I think we had to go to Congress. They had no seal. Now, I have forgotten whether we went to Congress or not. I know we had to assist them in some way in getting authority to have a seal, as there was some defect in their corporation. They had a seal and that took some time, and I will say that in looking over my records here I stated the other night that we had various properties which Sunderland and Hillyer bought on our books for sale for a considerable time, and I find in December, 1867, and in a paper we published every week, square 138 advertised, and in a subsequent paper, which is March, 1870, I find squares 138, 115, and 134, all of which were purchased by Sunderland and Hillyer.

Mr. TOTTEN: What is the date of that paper (referring to a
1133 real estate bulletin which Mr. Olmstead held in his hand)?

A. March 17, 1870.

Mr. HILLYER:

373 Q. Did the firm of Kilbourn and Latta own any of that property at that time?

A. They did not.

372 Q. Did they have any interest in it?

A. They did not.

374 Q. They simply advertised as brokers for the sellers?

A. That is what I stated.

375 Q. Did you ever have any connection with that square 115, except to have the right to sell it for the Institution for the Education of Colored Youth or for the owners, as brokers, prior to the time when you made the final bargain for it, in May, 1872?

A. As I stated in my examination-in-chief and in cross-examinations, we had made, prior to the final purchase, three separate propositions, I think, in which we were to be either the purchasers entire or outright, with nobody interested with us, or we were to be jointly interested with other parties.

1134 376 Q. None of these propositions had been accepted, had they?

A. They had not by the full board. They had been favored considerably by members of the board.

377 Q. And finally rejected?

A. Yes, sir.

378 Q. You knew there was no way of purchasing except through the board of trustees?

A. Yes, sir.

379 Q. Do you mean, when you speak of a refusal, that you ever had any legal right to compel that corporation to sell that property to you at a fixed price prior to the time when that bargain was concluded, in May, 1872?

A. We had no more legal right to sell or buy that property from the institution than we had to buy or sell the property that we sold for you in square 156.

380 Q. That does not answer my question.

A. They told us we could have it at the price and we took it, and

you told us to sell lots in square 156 and we did it, and to ratify the sale we relied on their word.

381 Q. Who do you mean by they?

A. Trustees.

382 Q. What trustees?

1135 A. All of them, finally.

383 Q. Did those trustees tell you that they had the right to bargain for the sale of that property?

A. No.

384 Q. Did not you know they did not have?

A. We did not question them one way or the other.

385 Q. What makes you say that the firm of Kilbourn and Latta had the refusal of this property prior to the board acting, in May, 1872?

A. I did not say that.

386 Q. Did they ever act before that?

A. I think they did in February, according to my recollection. It might have been a considerable time before. Perhaps they had no legal right to authorize us to sell it in 1867.

387 Q. Prior to the action of the board of trustees accepting an offer for this property did you have any bargain *in* with them legally binding for its purchase?

A. I have explained all we had, which was an understanding with them.

388 Q. With whom?

1136 A. With the board of trustees, that they would sell the property at such price.

389 Q. What I ask you is whether you understood they were under a legal obligation to you to sell it?

A. That is a legal question.

Mr. TOTTEN: I object to that question. Mr. Olmstead does not pretend to be a lawyer and we do not want his opinion if he is a lawyer.

Mr. HILLYER:

390 Q. Then all that you mean by refusal in your answer is what you have stated?

A. It is.

391 Q. Did you ever pay anything for this refusal?

A. No, sir.

392 Q. Ever make any writing in regard to it?

A. No, sir; at least I do not remember of any. We might have written them a letter that we would take the property at such a price. I do not remember about that, though, and do not think we did.

393 Q. Where property is sold and a deed of trust is given

1137 back according to business usage whose duty is it to pay for the trust deed?

A. The party that gives it.

394 Q. Why did you charge Sunderland, Hillyer and Co. with the trust deed on square 115?

A. Because they assumed the trust and it belonged to them to pay for it.

395 Q. What I mean is why did you charge them with the expense of that deed?

A. For that reason.

396 Q. Did not you state in your former examination that the deed when it was made was made to Latta, as trustee, for the benefit of the firm of Kilbourn, Latta and Olmstead?

A. I did.

397 Q. Then why did not they pay for this trust deed?

A. Because the transaction was simultaneous. We held that refusal until we sold the property to you, and we kindly allowed you to pay the expenses.

1138 398 Q. Did you tell the trustees of the institution from whom the property was purchased that you were buying for yourselves or others?

A. I did not. We told them no more than we told you. We would not be apt to.

399 Q. Can you answer the question?

A. I do not think we told them anything about it. I think I made all the negotiations made in regard to it, and I don't think I said anything to them about it one way or the other.

400 Q. Did you tell Sunderland, Hillyer and Co., before you sold to them, that you had purchased the property?

A. Not if I remember rightly.

401 Q. Well, do you mean by that that you did not do it?

A. I do, certainly.

402 Q. Have you a book of the stubs of checks which were given by the firm in 1872?

A. No, sir.

403 Q. Have you ever had such a book?

A. I have had some books. I never had a record com-

1139 plete. I have a portion of some of that year.

404 Q. Have you ever destroyed any of those stubs?

A. No, sir.

405 Q. What became of the book containing the stubs of checks drawn in 1872?

A. I have some of them; they are not complete.

406 Q. Have you any portion of those checks given during the year 1872?

A. I think so.

407 Q. Will you look & see?

A. Not now. If there are any they are in the bottom of a box that is full of papers, and it would take an hour to go through it.

408 Q. Will you look and see by to-morrow evening?

A. I will endeavor to do it.

409 Q. Were you the agents of Sunderland, Hillyer and Stewart in the purchase of lots 3, 4, and 7, in square 67?

A. I think we were.

410 Q. How did you come to be their agents?

A. I think they requested us to go on and buy those lots. I do not remember anything about that now, though.

411 Q. Did you ever say anything different about those lots from what they did about others?

A. I presume they did, but I do not recollect anything particular about that.

1140 412 Q. You were bound, then, to buy those lots at the lowest price at which they could be obtained by Sunderland, Hillyer & Co.?

A. I do not think that we were bound to do anything. I know nothing about that transaction. I did not make it, and until yesterday I did not know there was one item of charge for commission to Sunderland & Hillyer, and since the entry was made I do not think I have known what it was, and I have been trying since then to refresh my mind as to how that came about, and I cannot do it.

413 Q. Was there any different arrangement made in reference to purchase for Mr. Sunderland, after Sunderland, Hillyer, and Stewart had stopped buying, than those which had existed previously between the firm and Sunderland, Hillyer, and Stewart?

A. I do not remember that there was ever any arrangement made by anybody at any time.

414 Q. Well, did you purchase the property for Mr. Sunderland under the same conditions, so far as the relations of the firm of Kilbourn and Latta was concerned to the purchase, as those which existed between the firm and Sunderland, Hillyer & Co., when they made purchases?

1141 A. I do not know of any difference in their relations whatever.

415 Q. Did you state in your testimony that you purchased lot 2, in square 92, for Sunderland, Hillyer and Co.?

A. I think I have stated it both ways. I think that we purchased it for Sunderland, Hillyer & Co., and that we purchased it for Thomas Sunderland, and in making that statement I was very much as you were when examining in regard to these purchases. I thought it was purchased for Sunderland, Hillyer & Co., but it was afterwards transferred to Sunderland in the settlement between you.

416 Q. Why did you charge commission on that purchase?

A. I do not know that we did.

417 Q. If it is true, as shown by the accounts rendered to Sunderland, Hillyer & Co. by the firm of Kilbourn & Latta, that you did, can you state any reason for it?

A. No, I cannot now; that is a long time ago.

418 Q. You purchased for Mr. Sunderland lots in square 67, did you not?

A. Well, I do not know now. There were lots purchased for Sunderland in that square and for Sunderland, Hillyer & Co., and I do not know but they were all purchased for Sunderland,

1142 Hillyer and Co.

419 Q. Your account shows that you charged commissions

to Sunderland, Hillyer & Co. How came you to charge commissions?

A. I do not know that the accounts show that. I read the accounts as far as they go and I did not see anything in that respect, except one instance of $339.20.

420 Q. Have you looked at the account with Thomas Sunderland for the purpose of ascertaining whether commissions were charged or not to Sunderland, Hillyer & Co. without Thomas Sunderland?

A. Well, I cannot tell you about that now, I am sure. I thought I was pretty familiar with this business, but I find I need some refreshing of my memory. I did not see any account here with Thomas Sunderland.

421 Q. Did not the firm of Kilbourn and Latta charge Thomas Sunderland for the purchases made by him during that same fall nearly $2,000 for commissions?

A. Indeed I do not know. The account which you have will show. You said it was here, but I do not find it.

422 Q. When you did charge him commissions you were acting as his agent, were you not?

A. Perhaps we were or perhaps we were not.

1143 423 Q. When you charged him commissions you were under obligation, were you not, in that transaction of the purchase to consult his interests and to buy for him at the lowest price at which the property could be obtained?

A. I do not know that we were. There never was any agreement that we were to buy property at the lowest price or anything about lowest price.

424 Q. For all you know, then, that even when you charged commissions you were at liberty to make a profit upon the property yourself?

A. I have never said anything of that kind and I don't think I ever practiced it.

425 Q. You have said that you did not know, even when you have charged commissions, whether or not you were under obligation to act as the brokers of Sunderland, Hillyer & Co. or Thomas Sunderland and to buy for them at the lowest possible price, if I understand you.

A. I have said that I did not know that such a case was on record, and that there might be circumstances connected with it, with which I am not familiar now, which would explain anything of the kind, if there should happen to be such a case. I do not know that

1144 I have said that there never was such a case. We were not under obligation to buy anything or do anything that you have stated in your bill. There was no bargain about it in any shape. If it is a fact that in the purchase of any of this property or these transactions Sunderland, Hillyer & Co. paid a commission they paid it with their eye open, knowing what it was for, and they may be able to explain it now.

426 Q. You have stated in your examination-in-chief that square 114, about which Sunderland & Hillyer had consulted the firm of

Kilbourn & Latta, was finally bought for the firm in the interest of Senator Jones, have you not?

A. I think you are a little off on the square or else I made a mistake in my statement. I think it is square 112, is it not? It is right east of Stewart's house, is it not—that little triangle?

427 Q. In making the purchase were you the agent of Senator Jones?

A. No; I did not say that Jones agreed to pay, I think, so much for that square. I think I told him or I guess it was Kilbourn told him about it, and my recollection is that he made a proposi-
1145 tion that he would give so much money for the entire square. I know that some of it could be got from 30c. to 60c., and I offered to one man $2.50 for another portion of it.

428 Q. Who sold it to Senator Jones?

A. Nobody.

429 Q. He did not purchase, then?

A. No, sir.

430 Q. You have said previously in your examination that you were agents for Sunderland, Hillyer and Stewart in respect to the purchase of square 195. Explain how you were their agents and what you mean by it.

A. I mean that their attention was called to that square by somebody, and when they had concluded to purchase they came to us to settle the transaction—to close it up. To that extent we acted as their agents.

431 Q. How came you to advise Sunderland, Hillyer & Co., as you say you did, previous to their purchase?

A. Well, I do not know; probably they asked our advice.

432 Q. Was it your business to advise them?

A. Well, when they asked us a question we generally answered it, I guess.

433 Q. Did either Sunderland, Hillyer, or Stewart, to your
1146 knowledge, ever examine a deed or title paper which was in the office of Kilbourn and Latta in the year 1872?

A. I think they did quite often. Yet I could not designate any time or any one that they ever looked at.

434 Q. Did you say that they ever did examine a paper?

A. I say that I think they did.

435 Q. You have referred to squares 66 and 93 as being connected, if I understood you, with the purchases made by Sunderland, Hillyer and Stewart. Is that a fact?

A. I do not know what you mean by that. I don't think I said "connected."

436 Q. Did Sunderland, Hillyer and Stewart ever have anything to do with those squares?

A. Well, I understood that Hillyer and Stewart made the purchase, and then I understood that you made purchase of square 66, and then afterwards I understood that Senator Stewart was interested with you in both the purchases.

437 Q. To whom were the deeds of these squares made?

A. To you.

438 Q. Where does the first entry in your books appear for the purchase of squares 66 and 93?

A. Back in 1871 somewhere.

439 Q. Please turn to that entry and see what it is.

1147 A. Here is (witness referring to his book) 93 on the 28th of June, 1871. Real estate account, A. B. Stoughton, $35,700; cash to C. J. Hillyer, paid on account of square 93, $3,500.00.

440 Q. Is that all?

A. No; here is C. J. Hillyer, note payable in 3 yrs., $31,700; commission account, $1,196.00; cash, $2,804.00. It seems we loaned you $3,500 there to make that cash payment.

441 Q. When is the next entry on your books, after the entries of the purchases of squares 66 & 93, in relation to either of these squares?

A. The probability is that the next entry of any magnitude is when the settlement was made between you & Stewart & Sunderland.

442 Q. Is there any other entry prior to that time? That settlement was made in December, 1872, was it not?

A. I think so.

443 Q. The firm had nothing to do with that square until that time, did it?

A. Unless we paid taxes or interest.

444 Q. That is what I want to know—whether the firm of Kilbourn and Latta did pay interest or taxes?

A. I do not know whether it did or not. It is a long search.

1148 445 Q. Is it not a fact that those squares the firm of Kilbourn & Latta had nothing to do with them until after the sale by Stewart of his interest to Sunderland in December, 1872, and subsequent to the purchase I mean?

A. I do not know whether it is a fact or not. They might have had a great deal to do with it.

446 Q. Have you a letter written in August, 1872, by Mr. Latta to you or to Mr. Kilbourn which was introduced in evidence in the case of Kilbourn & Olmstead against Latta?

A. I think I have.

447 Q. Will you produce it?

A. There are some portions of that letter which are entirely private.

(The witness here handed to Mr. Hillyer the letter of J. M. Latta dated August 27th, 1872; whereupon Mr. Hillyer read the same and returned it to witness.)

Mr. Hillyer: I will ask to have the extracts made from this Latta letter which were introduced in the other trial. I do not care about the other portions.

Mr. Wilson & Mr. Totten made no objection. Accordingly the request of Mr. Hillyer was complied with, and the portions of the letter referred to are made a part of this deposition and hereto attached, marked "J. F. O." No. 2.

1149 Mr. HILLYER: You have stated in your answer in the case pending here that the firm of Kilbourn & Latta in May, 1872, had on hand many lots for sale. Did you mean by that that they had lots on hand which they owned, or that they had in their hands, as brokers for other parties, many lots for sale?

A. Both.

448 Q. The streets in Washington are designated from east to west by numbers, are they not, and from north to south by letters of the alphabet?

A. That is my understanding.

449 Q. What was the condition in 1872 of that portion of the city which was included between "K" street on the south, 22d St. on the west, "T" St. on the north, & 15th St. on the east?

A. What do you mean by what was its condition?

450 Q. What was its condition as to improvement?

A. I do not remember now.

451 Q. Were there any improvements of any consequence upon any of that property?

A. I do not think there were.

452 Q. Was there a single brick house, to your knowledge, upon any of it?

A. Oh, yes.

453 Q. Was there a brick house that cost as much as
1150 $1,000.00?

A. Yes, sir.

454 Q. Where?

A. Well on 15 St. between "K" and "L" Sts., and on "L" street and "K" St. & 17th St.

455 Q. Whereabouts on 17th street?

A. One right on the corner of 17th and "K."

456 Q. Were there any houses of any consequence—I do not care about going into detail—in that portion of the city?

A. Oh, yes; there was a very considerable number.

457 Q. Do you know of one or any of them that cost as much as two thousand dollars?

A. Oh, yes.

458 Q. Where?

A. I have just stated, corner of 17th & "K."

459 Q. Corner of 17th & "K." That building on the south side of "K" St.?

A. No; on the north side of "K" St.

460 Q. You speak of "K" St. What other building cost $2,000?

A. Another on "K" St. that cost at least $15,000.

461 Q. Well, I take "K" street as the southern boundary. I don't care about a house on "K" street, but I want those north of "K" St.

A. There were several on "L" street between 15th and 16th.

1151 462 Q. Well, any others?

A. Oh, I don't know as I know about every house.

463 Q. Well, was it not substantially unimproved property, that whole district?

A. Yes.

464 Q. Was it not nearly all for sale?

A. Oh, no; quite difficult to buy it then.

465 Q. There would be in that space I have mentioned some 63 squares, would there not?

A. I did not count them up. I should think very likely.

466 Q. What is the average size of squares between streets, say nothing about avenues?

A. No average to them; some are 350,000 feet, and one square up there is but 1,300 feet.

467 Q. I am speaking of the average between the streets.

A. I do not know. I can go and measure if you want it.

468 Q. Are you not sufficiently familiar with that portion of the city to state the average distances between the streets?

A. No; nor you either. I know too much about it to attempt to state.

469 Q. Well, the average distance would be as much as 300 ft., would it not?

A. Well, if it was that, yes.

470 Q. And in some cases much more than that?

1152 A. Yes.

471 Q. You say you thought it was hard to buy property up in that neighborhood. Did you say also that you had a good many lots on hand for sale?

A. Yes, sir.

472 Q. Why did not you sell them?

A. We did sell some of them to you.

473 Q. Do you think there was any difficulty in a man's purchasing as much as he wanted to at that time in that section?

A. He got in mighty lively to do it.

474 Q. If it was not for sale, what was it held for by the owners?

A. Some of it because they could not get rid of it.

475 Q. That, I suppose, was for sale then?

A. Yes; I guess that was for sale.

476 Q. What was the balance held for?

Mr. TOTTEN: I object to that because it is not intelligent.

A. I did not consult with those people about their business—why they did this or that.

477 Q. You have testified, if I understand you, that it was rather difficult to buy property there in 1872?

A. I state that now. Desirable property was not easy to

1153 get hold of at speculative prices, for it was pretty high.

478 Q. When did you assume the care and management of the property of Sunderland, Hillyer and Stewart?

A. Well, we had it pretty much from the time they bought it. They seemed right glad that we should take that sort of position.

479 Q. What I ask you is: When did you assume the care and management of that property or any portion of it for Sunderland, Hillyer and Stewart?

A. Well, from the very start.

480 Q. Was it before Mr. Sunderland went to Europe?

A. You went to Europe, he went to Europe, and then you both went a- different times. I do not know now.

481 Q. Do you know of any care and management of that property prior to the time when Mr. Sunderland went to Europe?

A. When did he go to Europe?

482 Q. Well, you have stated in your deposition, if I understand you, that that was the time when the property was placed in your hands?

A. Well, from that time we had the care & management of it.

483 Q. How came you to have the care & management of it from that time?

A. I think at the request of Sunderland & Hillyer.

1154 484 Q. Who made the request?

A. I think both of them.

485 Q. What was said about it?

A. I do not remember; there was not anything very definite; mainly that we were to look at this property and do whatever was to be done about it.

486 Q. You do not remember, then, of any definite arrangement about it?

A. No definite arrangement that I remember.

487 Q. Do you remember any specific placing of the property in your hands for care and management?

A. No; I don't think there was.

488 Q. When was the property put in your hands for sale?

A. Well, my recollection is that it was for sale from the time that it was purchased. It was bought on speculation, as I understood it, and be sold whenever a profit could be realized.

489 Q. You understand, then, that from that time it was in the hands of the firm of Kilbourn and Latta for sale?

A. Yes.

490 Q. When did the firm agree among themselves to
1155 charge $5,000 a year for the care and management of this property?

A. Well, I think in 1873; it might have been in 1874, when we talked of it in a general sort of way without coming to any definite conclusion about it. I know we had a consultation with Mr. Mattingly as to what administrators' fees were when they had estates in their hands and so on.

491 Q. What I asked you, and I wish you would answer it definitely, was at what time did the firm agree among themselves that they would charge $5,000 a year to Sunderland and Hillyer for the care and management of their property?

A. I have answered that.

492 Q. You do notk now, then?

A. I have made all the answer I can.

493 Q. What did you do about the care and management of this property in 1872?

A. We looked after the taxes, which was a very considerable labor. I think it was in 1872 that two rates were charged—one of 2% and the other at 3%, making 5% that year. Assessments were

being made in a great many cases by people who were not competent to do it, and in regard to one square I remember it was assessed at 40c. a foot (square 156). I think this was in 1872. I was
1156 one of the assessors in the District at that time for this section of the city about it, and I was pretty familiar with the business.

474 Q. What did you do about the assessments in 1872?

A. Appealed from them and got them reduced.

495 Q. What do you mean by appealed from them?

A. Appealed to the board of equalization and board of assessors.

496 Q. Did you take an appeal in writing?

A. I do not know whether we did or not. I don't suppose we did.

497 Q. How did you take it?

A. Appeared in person before the board.

498 Q. Did you appear in person before the board in 1872?

A. I do not remember whether in 1872 or the spring of 1873.

499 Q. I want to confine this matter to 1872.

A. Then I will make the answer general. I appeared before the board in regard to the property of Sunderland & Hillyer every time it was assessed and the board met.

500 Q. What did you go before the board for?

A. To save them money in having the tax reduced.

501 Q. Did you make a showing of having reduced it?

A. I did.

502 Q. What showing?

1157 A. I told them the property was assessed too high and gave them instances of other property, perhaps better located, not assessed so high; used what influence I had with them to get an equalization and succeeded, too.

503 Q. You used your influence with whom—with the board of equalization, do you mean?

A. Yes, sir.

504 Q. Did you use your influence specially for the property of Sunderland and Hillyer or for that in connection with other property in the northwestern portion of the city?

A. Both.

505 Q. Did you ever make a separate application for the property of Sunderland and Hillyer in reference to the reduction of the taxes?

A. Yes, sir.

506 Q. When?

A. Every time; I had a separate list made up which took Brother Bull a week, generally, to get it is shape, and we were paying him $150.00 per month for that business.

507 Q. Well, now I want to know if you know what you did in 1872 in reference to taxes; and, if so, state it.

A. I do not know except by referring to memoranda, and it will take time to hunt that up.

508 Q. Can you state any one definite act that you did in 1872 in reference to taxes?

1158 A. No.

509 Q. What else besides that did you do in 1872 in reference to this property?

A. I used to go around it every day.

510 Q. What did you go around it for?

A. To keep contractors from stealing the bricks, curbstones, fences, &c.

511 Q. Any other purpose?

A. No, sir.

512 Q. Did you do that in 1872?

A. I think so; it may have been 1873.

513 Q. Was it known in 1872 that you went around there to keep people from stealing bricks?

A. I do not know.

514 Q. Can you state any act that you did in reference to this property in 1872 besides what you have stated?

A. Not without reference.

513 Q. Reference to what?

A. Papers, memoranda, &c.

514 Q. I ask you to look at these papers and memoranda of reference by to-morrow evening and find out what you did in 1872. What did you do in 1873 in reference to this property?

A. You might as well wait for that, too. I will look up memoranda, &c., and answer to-morrow *to*-night.

* * * * * * *

1159 515 Q. Can't you answer now?

A. No.

516 Q. Can you mention what you did in reference to this property in 1874?

A. No.

517 Q. Or 1875?

A. No.

518 Q. Or 1876?

A. No.

519 Q. I understand you, then, that you have no recollection now of what you did during any of those years?

A. I have no specific recollection from which I could designate what I did on the first Thursday in October, 1871, or the ninth Wednesday in June, 1873. I take collectively, and if you want a specific answer I will refresh my mind as best I can and ende-vor to answer your questions.

520 Q. I will not confine you to date, but ask you, between the time of the purchase of this property and the dissolution of the firm of Kilbourn and Latta, what acts you can remember that you did in reference to it which constituted the care and management

1160 of it? I ask now, you understand, for specific acts?

A. One thing that we did was to—and it was accomplished very largely through our instrumentality—repeal the sewer tax, which was a very heavy tax on this property (one and a half per cent. on its entire value), and, if I remember rightly, valued at between two and three hundred thousand dollars, or perhaps about $250,000. I do not remember exactly about that, though.

521 Q. That sewer tax was a tax for all the city? All the city was interested in the repeal of it, was it not?

A. But all the city did not do much more than you did in regard to getting it repealed.

522 Q. Mention now what else you did.

A. We attended to the tax, as I said. We looked after the improvements, protected property, and after the panic of 1873 I don't think it would be gainsaid by anybody that we did more, perhaps, than all other parties in town together to keep prices up and
1161 keep a break from occur-ing. If we had not done more than the owners of this property did it would have been completed sunk. We used to write almost every week, some one of us, articles for the papers and sent copies to you very often. We were bolstering up the real estate market in the city. We could not have done more than we did if the property had been our own.

523 Q. Well, is that what you mean by care and management of this property?

A. By the term care and management I do not know that that has any specific meaning.

524 Q. Can you mention any specific act that you did for the benefit of this property directly during the period referred to, besides, of course, the accounts of disbursements of the funds of Sunderland, Hillyer, and Stewart?

—. Well, that of itself compelled us to keep a book-keeper at $1,800.00 a year from 1873 until 1877.

525 Q. As we are about to adjourn, I will ask you to look over such papers, memoranda, and so forth, as you have and by
1162 to-morrow evening to state, as far as you then shall be able to, what acts were done by the firm of Kilbourn and Latta for the benefit of this property between the date of its purchase and the dissolution of the firm.

The further taking of this testimony was postponed until to-morrow night, the 14th of February, 1882, at 7 o'clock.

WM. T. A. CURTIS, *Examiner.*

WASHINGTON, D. C., *February* 14, 1882.

Met, pursuant to adjournment, at office of J. F. Olmstead, at above date and 7 o'clock p. m.

Present: Mr. Totten, for Mr. Olmstead; Mr. Wilson, for defendant; Mess. Hillyer and Ralston, for complainants.

Cross-examination of Mr. OLMSTEAD resumed:

By Mr. HILLYER:

526 Q. I asked you yesterday to look over such papers and memoranda as you might have for the purpose of being able to
1163 state fully the specific acts which you did from 1872 to 1877 in managing and caring for the property of Sunderland and Hillyer, and I will now ask you to state what specific acts were done in that respect in the year 1872.

A. My clerk has been sick to-day and has not been here, except

to come in the morning and go away, and I have been interrupted a great many times. I have hunted over one large box of papers, which was all that I had time to do, and I do not find what I supposed was in the box, and I am in no better condition to state any specific things that I did to-night than last night, and beg your indulgence. I may add that I do not know that I will be able to find the papers. When I was at the other office, corner of "G" and 15th Sts., I had then a large amount of papers, memoranda, &c., that related to this property. I had all the statements, which were very elaborate, of taxes, water-main tax, sewer tax, general tax, special improvement tax, and so on. There was a large bundle of those papers. As I was looking over the papers to-day I found other things that called that to my mind, and I remember now having destroyed them, thinking they were of no value. I think
1164 there was quite a large bundle of them burned up. Now, what other things I have I do not know; but, if I have the time, I will look them over; if I cannot, I will have to make such answers as I am able to from what I am able to find.

527 Q. You understand, Mr. Olmstead, that the issue in this respect is this: that you claimed the firm of Latta & Kilbourn rendered certain services for Sunderland & Hillyer during the period from 1872 to 1877, for which you have charged them a sum between sixteen and seventeen thousand dollars, and that the complainants in this case deny that there were any services rendered or any considerable service, except such as appear from the accounts rendered and which have been introduced in evidence in regard to the reception and disbursement of money. That being the issue, I wish you to state now what, outside of the matters which appear in these accounts, was done by the firm of Kilbourn & Latta in the year 1872. I wish you to state the specific acts which constitute the services in that year for which the charge was made.

A. Well, Colonel, I shall reverse that a little. I have said that I could not to-night, and begged your indulgence, answer as to
1165 any specific thing, unless possibly my mind might be refreshed by something that occurs here to-night, in the year 1872 or any other year, as that is 10 years ago, and as this suit was not brought until 1881 and the matter entirely gone out of my mind, there was no thought of it until 1878, when you were here and the matter of the charge which had been made was brought up by you. You then stated in my office that you thought it was a very large charge or a high charge, or something of that kind, and made some other remarks which I do not remember, but which amounted to nothing, and after that Mr. Kilbourn and I called on you at Mr. Sunderland's room at the Arlington Hotel, and just before you were leaving for California the matter of this commission was brought up and you made some objections to it (not very serious) and Mr. Kilbourn said what he had to in regard to it. I think, in substance, I said that I did not care anything about your claim, as far as I was concerned: that I thought it was a fair & reasonable charge & *will* willing to stand by it, & I think we asked you something about what you thought of it or proposed in regard to it.

Your answer in regard to that I quite distinctly remember.
1166 I- was this: that, so far as Kilbourn & I were concerned, you did not care anything about it, but that Mr. Latta (I will not use your language exactly, as it was a little unparliamentary), but that, so far as Latta was concerned, — had acted so damned badly that you proposed to go for him. At that time you were talking with Mr. Kilbourn & I in regard to further charge of this property. You went away without doing anything in regard to it. You were here again in 1880, shortly before I was going to Indiana to take a deposition of Mr. Latta in the suit——

528 Q. What is all this in answer to?

A. Your question.

529 Q. I wish you would answer my question.

A. I am going to do it.

Mr. TOTTEN: I wish him to answer it in his own way, Mr. Hillyer.

The WITNESS (to the stenographer): Will you read the last sentence in my last answer?

The last *time* was re-read.

The WITNESS (resuming)—pending in this court by Kilbourn & Olmstead against Mr. Latta, and you had informed me that you proposed to see the firm. You came here to my office & told me you proposed to sue the firm for this matter of commission; that
1167 you proposed to sue the firm here and in Indiana; but that so far as Kilbourn & I were concerned, and at that time, as you have testified, you did not know anything about this matter of selling property for more than we paid for it, & the only question in your mind then was the commission. You said, so far as you & Kilbourn are concerned, Olmstead, you need not be worried about this, & you left my office. The next day I saw you coming out of Matt Carpenter's office, who was your attorney at that time, as you told me, who would prepare those bills against us. I told you I was going to Indiana, and that I was prepared to stand by anything that I had ever done here, but that I did not wish to be put to the trouble of defending a suit in the State of Indiana.

Mr. HILLYER: Have I asked you any question in reference to any of these matters?

A. Well, I don't know. I think that when I get through you will find that it will dovetail in very well.

530 Q. I simply wish to remind you that you are narrating a story that has no relation to the question I asked you. If you choose to do it I can't help that. I cannot compel you here to confine yourself to the question.

1168 A. There have been a number of stories narrated here that I did not think were pertinent and do not yet, but I think this is. I asked you as you came out of Matt. Carpenter's office what you proposed to do about that suit in Indiana; that I was going out there and did not wish to be bothered there. You said go ahead & attend to your business; you & Kilbourn will not be served in Indi-

ana. I went out there and service was made on Mr. Latta while I was in his town, & neither Kilbourn nor I were served.

(To the stenographer:) Just read the first part of that question.

The first part of the question was read.

(Witness resuming:) I have answered the first part of that question*ed*. I am unable to state specificially what was done in 1872 or in any other year or month.

531 Q. State, without reference to the year or month, specific acts which were done or any specific act which was done by the firm of Kilbourn and Latta for Sunderland & Hillyer between the month of June, 1872, and the 1st of January, 1877, outside of what appears to have been done in the account current which was rendered to them in the year 1878.

A. Except what I have stated in my direct examination in
1169 this case, which was a general statement, I am unable to specify any particular things that we did. We took the places of two gentlemen, who were at that time supposed to be very wealthy and to whom this property seemed to be a bagatelle, and who had left the country for an indefinite time, who paid no attention to it whatever, whose circumstances changed, and their notes that were given fell due and were unpaid, and our credit was largely impaired, as the property was supposed, on account of the manner in which it had been managed, to belong to the firm of Kilbourn & Latta—that is, that they were responsible for it. People, of course, knew that it did not all belong to the firm, but that it was an arrangement in which the firm was largely interested, whose notes falling due had to bolster*ed* up the credit of people who paid no attention whatever to their business, responded to no letters that we wrote them asking for money to carry on their property and pay their debts, gave us no advice, except that the property ought to take care of itself, which left the entire burden of carrying that amount of property from 1874 or 1875—1874, I think it was—to the dissolution of the firm, in January, 1877, on the hands of the
1170 firm of Kilbourn and Latta. In several instances the firm of Kilbourn and Latta gave their—I was going to say their notes, and am not sure that we did not, but we gave our endorsement for extensions of the notes on this property. We saw the creditors of this association every day or two and assured them that our clients or the parties whose property we represented were a little embarrassed to-day, but would be all right to-morrow, and so carried the whole thing through from the panic of 1873 until the dissolution of that firm. We did with that property just what we would have done with our own property if we had bought it and expected to make a large sum of money out of it, as those gentlemen did, and reverses had come, and we did everything we could to *to* carry it through and help them out. I do not think that three men ever served their clients with more fidelity, with greater zeal, than we served Sunderland & Hillyer in the management of that property, and there was no question about that service at all. It was recognized by both Sunderland & Hillyer until 1878, when they found

we charged them $5,000 a year for doing it, and their cir-
1171 cumstances had changed to such an extent that dollars & cents counted more to them then than when the services were rendered. Then they thought it a little too high, but they did not think it was much to- high. I will say, further, that at the time a receipt was given for the balance that was in the hands of Kilbourn & Olmstead of the unexpended moneys turned over by Kilbourn & Latta the question of this matter of commissions was then raised, and Judge Sunderland said to me that, so far as Kilbourn and I were concerned, he did not care a damn about it, but that they proposed to go for Latta, and consequently they did not want that receipt to stand as a bar against this claim for compensation, and I accepted it as such.

532 Q. Have you stated now in your long narrative all that you have to state in answer to my question as to the specific acts or services which were rendered by the firm of Kilbourn and Latta for Sunderland and Hillyer during the years mentioned?

A. I have said in the start that I was unable to state to-night specifically anything that occurred in any months or years.

533 Q. Do you know anything more to state?

1172 A. Well, I think I do. I hope I do.

534 Q. State it, then.

A. Oh, as this matter has been out of my mind so long and I did not think from the manner and treatment of these gentlemen that they had any particular idea of a claim against the firm of Kilbourn and Latta in that matter, I have not thought of it.

535 Q. Have you anything more to state about it?

A. Not to-night.

536 Q. Do you think you can learn anything more to state about it?

A. I hope I can. I will try.

537 Q. Is it not a fact that you have been examined as a witness two or three times already in reference to this matter and you knew you were to be examined as a witness in reference to it fully?

A. Well, I only know what I learn from day to day.

538 Q. You have stated heretofore, in answer to what you had done specifically in the way of care and management, that you prevented sidewalks being stolen from Sunderland & Hillyer. Do you consider that a prominent item of the service the firm of Kilbourn & Latta rendered?

1173 A. I simply thought that an incident, the same as I thought the matter of attending to the revision of taxes was a simple incident, and the matter of the revision of taxes had not been done when the firm of Kilbourn & Latta was dissolved, and after that, in 1878, a contract was made with me to attend simply to the revision of taxes, in which I was able to pay ten per cent. on all reductions that I should get. Excuse me a moment and I will put that contract in this evidence. (The witness here retired to his front office for the purpose of procuring the paper he had just referred to.)

Mr. HILLYER: I do not desire to delay this examination for the

purpose of this search at present, as an opportunity will be given for answering questions in regard to that contract and for producing it hereafter.

The WITNESS (resuming): I am not able to put my hands on that contract now, and I will waive it now and produce it hereafter. It was whether of interest or in abatement of taxes or an allowance on any account of assessments against the property of Sunderland & Hillyer. Under that contract I received between four & five thou-
sand dollars, if I am not mistaken in my figures, and I
1174 think almost all of it for my services in that one particular,
which in the manner in which we had conducted the affairs of Sunderland and Hillyer, is one of the instances of charge and one which was embodied in our estimate of our services, as, for instance, the revision of special taxes, &c., would have been but a single — in the care & management from 1878 on if I had had the property. They have had other agents and attorneys, and so on, and have paid them quite handsome fees for attending to their property.

539 Q. Are you through with your answer?

A. Quite.

540 Q. You state that the stealing of sidewalks and the pavements and the attention to taxes were only instances in the services performed by this firm. I wish you now to state what the principal things were.

A. I did not state that the firm stole the sidewalks. I think from your question principles would imply that stealing sidewalks was an incident in the performance of the firm.

541 Q. Will you state what the principal things were—if these were incidents?

A. Well, one of the principal things in the care & man-
1175 agement of this property was to bolster up and keep up your
credit, which was a hard thing to do, as you paid no attention whatever to that property from the time you bought it until you arrived here, in 1880. Sunderland paid less attention, and if one single piece of that property had gone to sale under any of the trusts or claims against it the whole northwestern part of the city would have been ruined and you with it. As it is, that property has, through the exertions of that firm, and I state it not very modestly either, for I think you recognize it, been kept up and it is to-day worth a large amount over and above what it cost you, & I here want to put in a little piece of paper on which you made your estimate of that property in 1876, when it was at its very lowest ebb.

(At this point the witness handed the paper alluded to to Mr. Hillyer, who reads the same.) The paper referred to is now offered in evidence and marked "J. F. O. No. 3."

542 Q. Whose handwriting is this in?

A. The signature & date is in yours. The figures are in the handwriting of Mr. Kilbourn, and if you let me have it a minute I will give the date.

(Mr. Hillyer here returned the paper to Mr. Olmstead.)

1176 (The witness continues:) I have stated that the figures are in the handwriting of Mr. Kilbourn. This remark at the end is in the handwriting of Mr. Hillyer & says: "Prices suggested by C. J. Hillyer January 7, 1876."

This is the property in which you claim you were badly swindled, after paying for it 46c. per foot or thereabouts, and which is put down in this way: Square 115; lot on the Circle, $1.50; lots not on the Circle or corners, $1.00; lot 19th and "N" Sts., $1.50; whole square, $1.20; square 158, lots on the north side (which is Massachusetts-avenue side), $1.00; on south side (which is "N" St. side), $1.00. These lots in square 158 are the lots that were purchased, under an order from Sunderland and Hillyer to Kilbourn and Latta, at 50c. a foot, and I wish to state, in connection with that, that the lots in square 115 have been sold since the 9th day of February, 1881, at the following prices: $97\frac{1}{10}$c., $82\frac{9}{10}$c.; some inferior ones down on "N" street, that are estimated in the schedule at $1.00, sold here at 75c.; another lot at $1.50; another at 70c. Two of the poorest lots in that square, as I think, because they front the British minister's stables, sold within a very short time at $1.25; and there is the plat to go with the statement, which
1177 I wish to introduce also.

(There being no objection to the plat and accompanying schedule already referred to, the same is made a part of this deposition and attached hereto, marked "J. F. O. No. 4.")

543 Q. You are not answering my questions nor trying to answer them. Have you any further statements which you wish to make?

A. Well, I have offered here a schedule of the property in square 115, which has been sold since February, 1881, with a map of that square, prepared by the agent of Sunderland and Hillyer, Mr. Bull.

544 Q. I wish you now to finish all the statements you have to make on your own account and endeavor to answer my questions.

A. I will endeavor to answer all the questions which you propound. If I have not answered the last one and the commissioner will read it I will endeavor to do so.

545 Q. I understand you, then, that you do not consider the prevention of contractors from stealing sidewalks any considerable part of the services rendered by the firm of Kilbourn & Latta?

A. I think it quite a considerable part. It required a good deal of time. It required us to be constantly on the alert, to be
1178 around about the property every day, and during some of that time is was not exactly convenient to get around.

546 Q. You stated that the persons who engaged in stealing these sidewalks were street contractors, did you not?

A. I said that a large amount of contracts were being let and material was very scarce, and that the sidewalks and curbstones were taken up and very often removed in the night, and nobody knew where unless they kept watch.

547 Q. Was Mr. Kilbourn a street contractor?

A. No, sir.

548 Q. Did he have no influence in street contracts?

A. Well, don't you know? I do not know. I did not attend to his business so closely as you are attending to it now.

549 Q. Was he not influential?

A. You may leave that inference if you choose to.

550 Q. Who was it who attempted to steal the sidewalks? Mention the names.

A. I do not know that after a lapse of 11 yrs. I am able to mention names.

551 Q. What instances do you know of where other attempts were made to steal the sidewalks from the property of Sunderland and Hillyer?

1179 A. I think I stated in my direct examination that I piled up bricks on square 66, and I now correct that and say square 93. I had the curbing and sidewalk taken up and piled on the square, and had the curbstone put on top of the bricks, so that they could not take them away, as I thought. I went up there a day or two afterwards and found it gone. I found some negroes and cart-drivers who told me about the circumstances, and I found that the property had been taken to the property yard of the District. I then came back to my office and made a little memoranda about that fact. I got a man by the name of Sheahan, I think his name was, who was a sort of superintendent, or something of that kind, to make me a statement, which I kept, and when they assessed your property and I was employed by you under that contract I got back what was due to you. I believe I recovered something over $900 over and above your assessment, on account of being slightly vigilent in your interest all that time. That case I remember.

1180 552 Q. You were paid ten per cent. for doing it, were you not?

A. I was. You had paid me $5,000 for attending to such matters under the contract, but you never paid me anything for getting the sewer *box* repealed.

553 Q. Do you know of any other instances than the one you have mentioned?

A. Nothing that occurs to me now.

554 Q. Did you not testify that there was another?

A. I think there are a good many others. There was a board of audit appointed here some years ago to audit all claims against the District of Columbia; amongst other things, damages to property on account of change of grade, and so forth. In your interest I put in a claim and spent a very considerable amount of time on your behalf, and had it not been for one very unjust ruling, as I thought, I would have recovered about 20,000 for damages to your property—and I think you will get it yet—on account of change of grade. When you came back here I told you of it, and I was very

1181 considerably flattered by your commendations for my zeal in your behalf. That claim is on record now, and it took me somewhere between four and five weeks to make the claim up, because it had to be on each specific lot. I had a survey made of each

lot to show how much the change of grade had cut down and how much filled up.

555 Q. If you have narrated all you desire to, I wish you would answer my question, if you know of any other instance of attempt to steal sidewalks except the one you have already mentioned?

A. I do not recollect any now.

556 Q. Was it the habit of people to steal sidewalks those days?

A. It was.

557 Q. Street contractors?

1182 A. I will say that it was quite the habit of property-owners of unimproved property to lose sidewalks and curbstones. I do not wish by this, however, to make any criticism on any contractor or contractors.

558 Q. Were there any sidewalks around square 66 in 1872?

A. There was a sidewalk on the "Q"-street front of it.

559 Q. Did any one attempt to steal that that you know of?

A. Do you know? I do not remember whether they did or not.

560 Q. Was there any sidewalk around square 93?

A. I said there was.

561 Q. On which side of square 93?

A. On the "Q"-street side there was a sidewalk and curbstone.

562 Q. Any other side except "Q" street?

A. Yes; I think on the Connecticut-avenue side.

563 Q. Did any one attempt to steal the sidewalk on the Connecticut-avenue side?

A. I do not remember.

1183 564 Q. Was there a sidewalk around square 156 in 1872?

A. Yes, sir; around square 156.

565 Q. Which side?

A. There was a sidewalk on square 156, and here is an assessment, which I hold in my hand, which says: "Thomas Young to Washington Corporation debtor: To all installments of taxes for curbing and paving footway, $2,054.10; interest at 10 per cent. from Nov. 17, 1871; square 156, lots 1 to 12, inclusive," which is "P" street.

566 Q. Any sidewalk on any other side except "Q" street?

A. I ain't through yet; don't burst me that way. Believing this tax to be illegal, I went down to the old office of the surveyor to hunt up the manner in which it was levied. I spent some three or four days there—all the time I could get—in hunting over those musty records and found no basis for this tax, and within a few weeks, for I have been fighting this thing from that time until now, they undertook to sell the property for that tax, and I got

1184 Mattingly to get out an injunction restraining the collector, and within a few weeks that tax, with its interest for 11 years, has been declared illegal, and Sunderland and Hillyer or their property have been save- something like $4,500. This paper which I have offered is an original, and for the protection of this property I would prefer that a simple copy go in.

Mr. HILLYER: I want the original to go in and not a copy.

The WITNESS: Then, I won't offer it. However, I ask that the original go in, as long as you want it.

567 Q. It is not signed by anybody, is it?

A. No; it is not signed, but it has been of great value to the property. I have kept it since I received it.

There being no objection, the paper referred to is made a part of this deposition, attached hereto, and marked J. F. O. No. 5.

568 Q. My question, upon which you have been speaking, was as to what portion of square 156 there was a sidewalk upon in
1185 1872. I understand you to state that there was a sidewalk upon the "Q"-street side and that alone; is that correct?

A. I did not state that at all.

569 Q. Then I wish you to state what part had sidewalk in 1872.

A. I said "P"-street side.

570 Q. And that alone?

A. That is all, I think. I do not remember any other.

571 Q. Any sidewalk on square 155?

A. I do not think there was.

572 Q. Any on square 151?

A. I do not remember about that. It seems to me there was.

573 Q. Was there any on square 195?

A. Oh, yes.

574 Q. How many sides?

A. I think on three sides.

575 Q. Did anybody attempt to steal any of them?

A. I do not remember whether they did or not. Yes; they tried to steal sods, and I had two or three parties arrested for doing that, and had to go up to the police court to defend the property.

576 Q. Am not asking now about sods. I am asking about
1186 sidewalks. I asked you if there was any attempt to steal the sidewalks on square 195?

A. I do not remember.

577 Q. Wouldn't you know it if they had?

A. I might not be able to recollect after 11 years.

578 Q. Did anybody try to steal the sidewalk from square 115?

A. I don't think they did.

579 Q. Was there any sidewalk around square 67?

A. No; that was about 30 feet above grade.

580 Q. My question is, was there any sidewalk around it?

A. I said no.

581 Q. Any around squares 67 or 69?

A. No.

582 Q. Did anybody try to steal the sidewalk from square 158?

A. Yes; I think they did.

588 Q. Who was it?

A. I do not know, as it was an every-day occurrence to find persons attempting to steal sidewalks.

584 Q. State the circumstances, if you know them.

1187 A. I am not able to state all these circumstances. These were instances in the management and care of this property.

It was a daily thing to look after it and see that it was protected, and to attempt to recount any little instances, as the picking up of a brick, it has entirely gone from my mind.

585 Q. Have you any recollection of anybody attempting to steal the sidewalk from square 158?

A. I have said that I thought they did, but did not know positively about it.

586 Q. Cannot you state the circumstances in reference to it?

A. I do not know and cannot state the circumstances in reference to these matters. These things have occurred to me to-night.

587 Q. The only instance that you remember is that some bricks were stolen — the sidewalk of square 93, is it not?

A. That was quite a considerable lot.

588 Q. Please answer my question. The only thing you remember is that some bricks were taken from the sidewalk of square 93?

1188 A. You interrupt me before I finish giving answers or the answers would be satisfactory.

589 Q. Your answers are satisfactory to me, I assure you, and you shall have full license to answer. I want you to answer my questions when you get ready.

A. That was only one instance.

590 Q. What did the firm of Kilbourn & Latta do about that?

A. They got it back again.

591 Q. How?

A. By making a memoranda in regard to it, find out where it went to, and when the proper time came make a claim and get it back.

592 Q. Did the firm of Kilbourn and Latta ever make a claim for it?

A. They did not, because you took the property out of their hands before, and on account of the vigilence of that firm and the memoranda you were able to do it; otherwise you would not.

593 Q. Preventing the stealing of sidewalks, making memoranda, taking brick from sidewalk on square 93; is that it?

1189 A. I don't say that. There are a great many other things that I am unable to remember just now.

594 Q. When was that got back—this reclamation for taking up sidewalk from square 93—before or after 1878?

A. I think 1880. You were here at the time and we paid it over to you.

595 Q. You were employed at that time, were you not, by Sunderland and Hillyer to obtain revisions on taxes, upon special assessments and drawbacks, and for getting this drawback which you have stated you were paid 10 per cent. of the amount, were you not, according to agreement?

A. I was.

596 Q. Now, you have spoken about the trouble of this firm in reference to the assessment for general taxes. Will you state what the firm did in that respect in 1872?

A. We made a schedule of all this property in lots and squares;

went back and hunted two or three years of numerical books to find just how it was assessed, as the assessments were made in the
1190 names of the owners to whom it is last transferred rather than under the title of the property. Then we got the bills for each lot or square, if it happened to be a block, separately. We revised all those bills to see that there were no errors in the calculation—no mistake in the assessment—and paid them.

597 Q. Anything else?

A. No; we did that every year from that out.

598 Q. What did the firm do in reference to the assessment of general taxes in 1873?

A. The same as 1872.

599 Q. In 1874?

A. Same thing.

600 Q. In 1875 and 1876?

A. Same thing.

601 Q. And nothing more?

A. Nothing more in regard to payment of taxes.

602 Q. The assessment of general taxes I am speaking of?

A. In regard to the assessment of general taxes, every year I went down as soon as the property was assessed and spent two or three days in taking off from the assessor's record the assessment
1191 made. If I considered it excessive I made an appeal on it, and when the proper time came did appeal to the board.

603 Q. Can you name any specific time in which you made appeals in regard to assessments on this property from the assessments made by the assessor to the board of equalization?

A. I did it every year that the property was assessed.

604 Q. Were those appeals made in writing?

A. I do not know whether they were or not. Sometimes they were and sometimes they were not.

605 Q. When they were not made in writing how was it done?

A. By my going before the board and spending a very considerable amount of time, because they took up each district by itself. They would start out one day by going through every one from 1 to 50, and I had to be there ready to make my appeal. If some very important person came in they would stop and take up his appeal and make it special. I would then go home and return another
1192 day, and in that way would go along until I got through with the whole thing.

606 Q. Can you mention any specific parcels of property in regard to which you made an appeal in any specific year?

A. No; I cannot, any further than I have.

607 Q. Did you at any time present any specific proof in relation to the valuation of property upon which you asked them to revise the assessment of the assessor?

A. I happened to be so fortunate to be considered by the board of appeals and by the Commissioners of the District as something of a judge of real estate, and it was, I think, very seldom that I had more to do than to state that this property had been bought for so much and sold for so much. In most cases they took my judgment

in regard to it, as I was often called in by the board of appeals to give my estimate where differences arose between the owners and assessors.

608 Q. In the year 1872 or 1873, or any of the years between that and 1876, did the board of equalization intend in their estimates of value to value the property at its real cash value?

1193 A. Do you know I am unable to state what their intention was. They didn't communicate it to me.

609 Q. Did they have a rule in relation to estimation of value?

A. I am not conversant with their rules.

610 Q. How did you attend to their business if you knew nothing about their rules?

A. I knew what the law was.

611 Q. What was the law?

A. The law was that property should be assessed at its cash value.

612 Q. Was there any of this property valued as high as twenty cents a foot?

A. Square 156 was assessed at 40 cents a foot.

613 Q. Will you testify that any lot in that square was assessed at forty cents a foot?

A. Yes, sir.

614 Q. You know that fact, do you, as well as other things you have testified to about assessments?

A. I know that to be the fact.

615 Q. Do you testify that the average of that square was valued at twenty cents a foot?

A. I have not testified to that.

616 Q. Well, do you know what it was?

A. I can find out.

1194 617 Q. Did you pay attention enough to it at the time to know what it was?

A. I did.

618 Q. And you have no recollection about it now?

A. Not very vivid. The portions of that square which I have referred to were assessed at forty cents a foot; that square is bounded by Seventeenth, P, & Q Sts. At that time we owned lots 1, 2, and 3, in square 181, which we had paid seventy-five cents a foot for and sold it, I think, at a dollar and a half. I made the appeal on square 156, and cited these lots in square 181, which I considered were worth three or four times as much as any lot in that square, and I came very near having the price raised on my own lots in order to save the tax on yours; I remember that incident in the appeal.

619 Q. That was an appeal on some taxation on square 156. Do you remember any other appeal in reference to lots in any other square?

A. My recollection is, Colonel, that I made an appeal on nearly every piece of property that you owned.

620 Q. State exactly how you made your appeal and what was done.

A. I cannot do that; I told all that I can.

1195 621 Q. You must answer as far as you can as to how the appeals were taken and what your services were in the matters.

A. I told you I spent days and days in attending to this thing. To illustrate it, I suppose I did what you might have been called on to do in your profession, and that is to stand around court waiting for your case to be called up, and perhaps then find it postponed or something else.

622 Q. Well, now, have you stated everything, as far as you know, in reference to the services of the firm of Kilbourn and Latta in procuring a reduction of the assessment of general taxes?

A. I have stated all that I can recall just now; something else may recur to me.

623 Q. You stated that the firm of Kilbourn and Latta rendered some services in reference to a sewer tax; will you state what it was?

A. We were, I think, the principal movers in having that considered before Congress; we deemed it from the start, or very shortly after its levy, as illegal.

1196 624 Q. Well, what was done?

A. Well, now, to describe what was done is something beyond my power, just now.

625 Q. I want to know what the firm of Kilbourn and Latta did about it.

A. We did about all that was done to get the law repealed. I think Judge Wilson helped a little.

626 Q. What was that?

A. Well, we applied to Congress to have that looked into & investigated to see whether it was legal or illegal.

627 Q. Did you do that for Sunderland & Hillyer?

A. We did it for every client we had.

628 Q. Did you charge them for care and management in that respect?

A. We did.

629 Q. For whom?

A. Anybody for whom we got that tax repealed. I do not know or remember who they were, and I cannot now tell.

630 Q. Have you any charge against anybody for care & management by reason of having obtained a law from Congress to repeal the sewer tax?

A. No, sir.

631 Q. Who paid you anything for care and management
1197 of property on account of services of that kind?

Mr. Wilson: The question is objected to because it is immaterial to this case and irrelevant.

A. I do not know.

632 Q. You stated that there were difficulties about ascertaining what the tax on property was. What were these difficulties?

A. Differences just as I stated a few minutes ago in answer to a similar question, that the property was assessed in the name of individuals & not according to its designation; as, for instance, lot 2 in

square 66, or lot 10 in square 97. If Mr. Beveridge, from whom that was bought, owned it a sufficient length of time, the assessment was made for it to get on the records and get down to the tax office; it would be taxed in his name. If it was not, it was taxed in the name of some former owner. The first three years that we had the care and management of this property we had almost invariably to examine the abstracts of title to follow that property back, trace it out, and so forth. When they sent up the tax bills
1198 they would leave out lots and parts of lots, or they would get the wrong part assessed. For instance, when part of a lot had 2,500 feet and another part of the same lot might be for 1,300 feet, we would have to look up the books, your accounts, and so forth, and see that the proper part was assessed and taxed to you.

633 Q. Did it make any difference, in regard to the amount at which property was valued for assessment, who owned the property?

A. I don't think it did.

634 Q. Then these differences were not questions relating to the amount of assessment, as I understand you, but simply related to ascertaining the portions of property upon which assessments were due from Sunderland & Hillyer. Is that it?

A. Yes; that is one part.

635 Q. Is there any other part?

A. The other part was that the wrong property might be in the tax bill rendered. For instance, in square 151 you owned certain lots. In that square you had lots 17 & 18, and they skipped
1199 two or three and had others charged. I remember very distinctly the first time that came in. They assessed from 17 to 149, inclusive. The next time the bill was rendered it came in with lots 17 & 18 left out, and in two years left out entirely, and somebody else paid it probably because they did not attend to their business any better than you did.

636 Q. You knew what property of Sunderland and Hillyer you had?

A. Yes; but it was impossible to carry it in the mind.

637 Q. If a list of the property owned by Sunderland & Hillyer was made out and presented to the assessor in any particular square, or any particular lot designated by its number, was there any difficulty in obtaining the amount of assessment on that?

A. Yes, sir; very great difficulty.

638 Q. State what it was.

A. Because the assessor did not know, and a 400 dollar per annum man would not be expected to know. I think any owner of real estate in this city would say that there never has been yet a system of book-keeping in the tax office of this District that
1200 anybody not conversant thoroughly with their own business and property could understand. If you go down there to-day and apply for your tax on your house I venture the assertion that you would not get it in three separate attempts unless the property was so subdivided that one single lot stood on the books in your individual name, and then you would not get the water tax or the special improvement tax. You would get simply what you called

for in one office, and there are four separate offices that you would have to go to to get all the information you wanted.

639 Q. If the assessors did not know what a lot was assessed at, who did?

A. John F. Olmstead knew every time.

640 Q. I understand that the services of the firm of Kilbourn and Olmstead was in ascertaining directly about lots of which the assessors themselves were ignorant. Is that it?

A. I didn't say that. You seem to seek in my simple explanation of these things to throw some criticism on the unfortunate people whom I had to deal with, which I desire to disclaim. They did the best they could.

641 Q. Of what importance was it to Sunderland & Hillyer
1201, to ascertain who the owners were to whom certain property was assessed, provided they knew the amount of assessment made upon a particular lot owned by them?

A. It did not seem to me that they paid any particular attention. It was a benefit to them to know. It was necessary in every instance on every lot to know the number of square feet of the lot. Property as stated in the assessors' books—as the plat books of this city up to 1875 will show—was about as incorrect as could be and the numerical books prior to 1875 about as poor a record of property as could be conceived, and in every instance Mr. Bull and I went over the calculations made by the assessor and compared them with my record in the numerical books which I made out in 1870, which were the only records at that time in the city of Washington which were correct, and which, I think, saved Sunderland & Hillyer a great many dollars.

642 Q. You only saved it in the way you have stated, did you not? Can you name any other way in which you saved it except as you have stated?

A. I cannot. I did the same for their property that I would have done for my own.

1202 643 Q. Did the firm of Kilbourn & Latta ever advance any money for Sunderland & Hillyer during its existence?

A. They advanced $3,500 to Col. Hillyer the first purchase he made.

644 Q. Where was that?

A. That was in the purchase of square 66.

645 Q. How long did they advance it for him?

A. Long enough for him to get a draft here and get it cashed.

646 Q. I am not speaking of Senator Stewart's purchases in 1871, I am speaking of Sunderland, Hillyer & Stewart, and I ask you whether or not the firm of Kilbourn & Latta ever advanced any money to them during its existence?

A. Your statement that Sunderland & Hillyer were the only parties interested in this suit is what I was thinking of. I do not remember that the firm of Kilbourn & Latta ever advanced any money for Sunderland, Hillyer & Stewart as a firm.

647 Q. I ask you did you or any individual member of that firm

ever advance any money for Sunderland & Hillyer during the existence of that firm?

A. I don't think it did.

648 Q. If they did it wouldn't you know?

1203 A. I might forget it. It is eleven years ago. I do remember that we either gave our notes or endorsed August Muller's notes at the Metropolitan Bank to carry the indebtedness. That was on square 66; and the loan that was made by Gen. Jeffries, on square 156, we took some District bonds. We could not convert those bonds and we borrowed money from the Metropolitan Bank on our note, with those bonds as security. In regard to square 156, I think, on the 2d of October, 1873—I know shortly after the panic—the banks here had closed, with the exception of two, and we were unable to offer to the creditors of Sunderland & Hillyer or anybody else anything but certified checks, and Thomas Young, to whom Sunderland & Hillyer owed $13,000, refused to take a check. We tried to get him to take part and wait a few days, and he became quite ugly and threatened to sell the square unless we paid him legal tender, and we finally pacified him and things got a little easier here and the banks resumed after awhile and he got his money. That was not the fault of Sunderland

1204 & Hillyer, as their money was here, but under the embarrassment then existing, owing to the panic, it was not available, and the firm of Kilbourn & Latta had to suffer to a very considerable extent the odium of not being able to pay. It was supposed that these were their notes, and Mr. Young was quite diligent in talking about it and was quite mad because he wanted his money, and it was currently reported in this town that with the firm of Kilbourn & Latta it was a question of short time when they would go to the wall; that they bought the entire northwestern part of the city and could not carry it, and the old crabs in this city who were jealous were delighted to find that their paper was held up in the bank, and so forth, which was not pleasant.

649 Q. Have you mentioned the only instance in which you claim that the firm of Kilbourn & Latta ever advanced money to Sunderland & Hillyer?

A. I guess I have mentioned all I think of.

1205 650 Q. Is it not a fact that the firm of Kilbourn and Latta had money in their hands belonging to Sunderland and Hillyer, from 1872 to 1877, over and above any payments made by you?

A. No.

651 Q. I ask you to take your account which is before you, and which I present to you—take the dates of the footings as they happen at the bottom of the pages—and state whether or not during all these times there was not money of Sunderland & Hillyer's in your hands.

A. I have stated that at that time there was money in our hands, but it was not available.

652 Q. I want you to look at the footings under the accounts of Sunderland & Hillyer and also Thomas Sunderland, because, as you have testified, the money was sent indiscriminately for both those

accounts and applied by the firm of Kilbourn & Latta, if I am correct, according to their judgment, to the one or the other. I want you to state if from 1872 to 1876 there was or was not a balance of money in your hands belonging to Sunderland & Hillyer, according to your own accounts?

1206 A. Thomas Sunderland is not a party to this suit. I further say that these accounts, as they appear here, are segregated, and consequently show nothing of the real condition of the accounts of Sunderland, Hillyer & Co., Thomas Sunderland, or C. J. Hillyer. These are three accounts, and in order to answer that question they would have to be merged and a balance struck on such a day as you choose to ask for.

653 Q. Did C. J. Hillyer ever have an account with the firm of Kilbourn & Latta?

A. Yes, sir.

654 Q. Since 1872?

A. Yes, sir.

655 Q. When?

A. A good part of the time.

656 Q. State how and in what way.

A. I will get the book.

At this point Mr. Olmstead retired to the front office for the purpose of obtaining the book of accounts referred to. After having secured the same he made the following statement, with the book open before him:

1207 On the 29th day of June, 1875, the account of C. J. Hillyer stands on our books debited with $829.64. On the 5th day of October it is credited with $14,000. On the 8th day of that month it is debited with $14,000, leaving the $829.64 still a balance. On the 30th day of October there is an additional debit of $109.98. On the 31st day of March $110.00 is paid in. On the 3rd day of April, 1876, it is debited with $110.00. On the 4th day of May, 1876, it is debited with $243.85. On the 30th day of December, the day of the dissolution, it is credited with $1,183.50, which was charged into the account of Sunderland & Hillyer to balance the account of C. J. Hillyer; so that from April 9th, 1875, to Dec. 31st, 1876, that account was debited all the way from $100 to $1,183, individual account.

657 Q. How did that indebtedness of $829.64 accrue?

A. Wait; I will get it.

658 Q. Well, that is immaterial. I will ask you this question: Whether, taking the three accounts—the account of Sunderland, Hillyer & Co., the account of C. J. Hillyer, and the account of Thomas Sunderland—there was ever a time when there was not money in the hands of Kilbourn & Latta to their credit?

1208 A. As the accounts are rendered to Sunderland, Hillyer & Co., taken with the account current which was given to them when they left for Europe, will show that from that time out or from the end of that year out there was a balance to the credit of

Sunderland & Hillyer of about the amounts of commissions which was charged to them.

659 Q. Well, that is about how much?

A. About $5,000 a year.

660 Q. Then there was in the hands of the firm of Kilbourn & Latta, to the credit of those three accounts together, always a sum about equal to $5,000?

A. That was our intention. Sometimes it was short of that. If payments had to be made & we didn't have the money we paid it and then trusted to getting ourselves reimbursed by the next remittance that we might get from them. We always endeavored to keep that account just about, as the accounts were rendered to you, some thirty of them, will show, *about* $5,000 ahead. The charge for commission was never made on the books till the dissolution
1209 went into effect, and then the whole thing was charged.

661 Q. I understand you to say that the firm borrowed some money upon some bonds obtained in 1876?

A. Yes.

662 Q. How much money did they borrow and how many bonds were deposited as collateral security?

A. They borrowed $50,000 and got $50,000 of bonds, less the interest or what the discount might have been, which I have forgotten now. The deed of trust was made for $50,000 and we took $50,000 in bonds. Whether those bonds were above or a little below par or accrued interest or some discount on them, I have forgotten now.

663 Q. Prior to the 1st day of July, 1876, was there any indebtedness of Sunderland & Hillyer on account of any of the real estate transactions which passed into the books or through the hands of the firm of Kilbourn & Latta, which had been or was overdue?

A. I do not remember whether there was or not.

664 Q. Can you find from your books or in any other way that there was?

1210 A. I can if you will give me time to do it.

665 Q. You think there is something there overdue, then?

A. The impression on my mind was that there was, but I may be mistaken.

666 Q. So far as you are able to state, then, from anything that you knew up to that time, all of their indebtedness as it fell due had been paid at the time; is that true?

A. Yes, that is substantially true.

667 Q. If you never advanced any money for Sunderland & Hillyer and their debts were never overdue, what do you mean by saying that the firm of Kilbourn & Latta carried them?

A. I have not stated that they carried them.

668 Q. What do you mean by stating that the firm of Kilbourn & Latta was embarrassed in its credit by reason of its transactions with Sunderland and Hillyer, if these facts you now state are true?

A. I stated that owing to the panic of 1873 and being unable to convert funds or to get currency, I stated what I did in this
1211 connection simply as to 1873, and not anything since that.

I do not remember about anything since and I will look up the matter.

669 Q. You mean to say, then, that what you meant by the firm of Kilbourn & Latta carrying their indebtedness and being embarrassed consisted of the fact that in 1873, at the time of the panic, while Sunderland & Hillyer had money in your hands, the banks were unable to furnish the currency, is it not?

A. That was one of the embarrassments.

670 Q. State something else, if there are any others?

A. I do not know that there are. I will look over the record and see.

671 Q. Is it not a fact that during all those years Sunderland & Hillyer came nearer carrying the firm of Kilbourn & Latta than the firm of Kilbourn and Latta came near carrying Sunderland & Hillyer?

A. That might have been a fact if they had paid any attention to their business at all, but I don't think it is.

672 Q. Was not Mr. Sunderland here in Washington till March, 1873?

A. I do not remember when he went away. I think it was in the spring of 1873. It was then that he went to Europe,
1212 I think.

673 Q. You say he did not attend to his business while here?

A. No, sir; nor you either.

674 Q. Did not Mr. Hillyer return from Europe in October, 1873, and remain here during the years of 1874 and 1875?

A. He returned in 1873, I think, right after the panic. I think he was here during portions of the years 1874 and 1875.

675 Q. Didn't he have an office here to transact business and reside here?

A. Well, he had an office here.

676 Q. Was he not here nearly all the time?

A. I don't remember about that. I do not think he did. My recollection is that he was not here a great portion of the time.

677 Q. Can you state anything accurate about that?

A. I cannot.

678 Q. Was not Mr. Hillyer here until the month of July, 1876—during 1874 and 1875, up to July, 1876, with the exception of two or three months?

A. I think he went to California two or three times during that time, and I think he went away to the seashore another considerable
1213 portion of that time. I know he stated to me once that his office hours were from 10.30 to fifteen minutes before eleven. I don't know how much business he did.

679 Q. After July, 1876, and up to the time of the dissolution of the firm, what debts, if any, were overdue of Sunderland & Hillyer?

A. You have asked me that question two or three times, and I told you that without reference I could not answer.

680 Q. What did you mean, then, by saying that the firm of Kilbourn and Latta was annoyed and vexed and their credit injured by the failure of Sunderland & Hillyer to pay what they owed?

A. I answered that question in general, and now you ask for a specific answer.

681 Q. Do you mean to state such a fact in a general way and yet cannot mention a specific fact to sustain your statement?

A. I just mentioned from memory what we did during that period.

682 Q. What did you have to do in reference to the business of Sunderland & Hillyer? You stated that you had to support their credit. I wish to know what you did in that respect.

A. I have not said that.

1214 683 Q. You used the expression, bolster up their credit. I want to know what you meant by that?

A. I did not state that; I think we had to bolster up Sunderland and Hillyer, is what I said, and — I meant by that was this property.

684 Q. What you meant by that, then, and by all that you have stated in that regard was that you had to attempt to keep up the price of property; is that it?

A. That was a very considerable portion of what we had to do. Whether we did anything else I do not remember.

685 Q. What did you do towards keeping up the price of property?

A. Well, I have answered that question three or four times.

686 Q. I wish you to answer it again, because I do not remember of its having been answered.

A. One credit that we had in this town was that of being called the bulls in real estate; that we wrote articles for the papers in regard to Washington—its desirability as a place of residence on account of the comparatively low price of property and low

1215 tax on property; and each year we used to, at a very considerable expense in the way of time and money, publish a statement of the transfers of real estate. We kept a record of these transactions and every year, and sometimes oftener, publish- statements showing the amount of property transferred during the year. Thewe wrote editorials in regard to and comparing it with the condition of the real estate market in other considerable cities, in order to show that the panic and its attendants had scarcely affected the values of property in Washington, while in New York, Chicago, St. Louis, and other cities the values of property had greatly changed; that it was only a temporary stagnation in Washington rather than any break in values. In other words, that property had never reached its full value here as compared with other cities.

687 Q. Is what you have mentioned an element in the charge made by the firm of Kilbourn & Latta for care and management to Sunderland & Hillyer?

A. It enters into it somewhat, I guess. We treated Sunder-

1216 land and Hillyer as we would treat ourselves; we studied their interests as closely as we could possibly have studied our own. We considered the keeping up of that property of as much value to us as if we had owned it, and, I think, succeeded.

688 Q. At the time of the dissolution of the firm how much of

Sunderland and Hillyer's money was in your hands? I speak of prior to the time of taking out $22,000, which you took out for what you called care and management.

A. $18,126.84.

689 Q. That is besides this $22,000?

A. That is the balance in the hands of Kilbourn and Latta when the firm dissolved.

690 Q. Were there any creditors pressing at that time?

A. I do not remember whether there were or not.

691 Q. Without taking out $22,000 you had $40,000 in your hands at that time, didn't you?

A. The firm had $18,126.84 in its hands then.

692 Q. That was after taking out the $22,000, was it not?

A. That was taken out long before.

1217 693 Q. How long before?

A. Every year.

694 Q. You have stated here, in answer to a question, that during the existence of this firm the creditors of Sunderland and Hillyer had to be pacified by the firm of Kilbourn and Latta at good expense to the credit of the firm. Now state what you meant by that.

A. I have stated.

695 Q. Well, state it again, please.

A. I have stated it in regard to Thomas Young and, I think, August Muller. These are only two creditors that I happen to remember now.

696 Q. Aug. Muller was a creditor of Sunderland & Hillyer to what amount?

A. I think $11,000.

697 Q. When was it due?

A. I think in the early part of 1876. I do not remember now, exactly.

698 Q. Due in June, 1876, was it not?

A. I think that was the time; yes.

699 Q. Did not Mr. Muller have a mortgage upon the whole square 66 as security for that?

A. He did.

1218 700 Q. That included the dwelling-house erected by Hillyer, did it not?

A. It did.

701 Q. That dwelling-house cost $50,000, didn't it?

A. I think it cost more.

702 Q. Did not the square, independent of the improvements on it, cost Sunderland & Hillyer $25,000?

A. It did.

703 Q. Do you mean to say August Muller was pressing for the note of $11,000, secured on a house and property of over $70,000?

A. I do. It was not a question whether a man had security back of his indebtedness or not, but when they thought they could not get the money they wanted it.

704 Q. Is that what you mean by straining the credit of Kilbourn & Latta?

A. That is one of the things; yes.

705 Q. Was the firm of Kilbourn & Latta or any of the members of that firm on the note of Mueller?

A. No.

706 Q. No one of them?

A. No, sir.

707 Q. Then what had they to do with it?

A. Only that Mueller knew that the property was transferred to James M. Latta, trustee, and he looked to James M. Latta as
1219 the payee of that note.

708 Q. Did Mueller know who owned the property?

A. At the time you bought it?

709 Q. Do you mean to say that Mueller looked to Kilbourn & Latta for payment of that note, secured in the manner in which it was?

A. Yes; he called on the firm for payment.

710 Q. What do you mean by that?

A. I mean that he came to the firm of Kilbourn & Latta for payment of that note and supposed that that property belonged to the firm. He was not an intelligent gentleman, to whom explanations could be made, and the only thing to do with him was to tell him that it would be paid in a short time and fix it up this way or that way.

711 Q. Do you mean to say that Mr. Mueller represented to the firm that he thought the property belonged to it or had anything to do with paying this note?

A. I do not think he represented or said anything about that.

712 Q. Why do you think he thought so?

A. By his calling on the firm for payment.

—. Can you mention any other instance where the firm of Kilbourn & Latta were harassed by creditors of Sunderland &
1220 Hillyer than what you have about Mueller?

A. I have answered that three or four times—that without refreshing myself from the records I cannot recall any other instance.

714 Q. Why did you make that statement in your testimony and answer if you cannot now recall any instance of it?

A. Because I believed it to be true, and do yet.

715 Q. Do you think you have a right to assert upon oath a statement of that kind when you have no recollection in regard to the facts upon which it is based?

A. I do not think I have stated in the sense in which you have put it. I have stated a generality in answer to a general question.

716 Q. I will ask you no more about that this evening, but as the examination is going on to-morrow evening I wish you to examine your record and see if you can ascertain anything that after such an examination you will be willing to testify that the creditors of Sunderland & Hillyer were annoying and impairing the credit of the firm of Kilbourn & Latta, and who were required to be pacified by the exertions of that firm?

A. I have volunteered to do that some time ago.

1221 717 Q. Who told you that he looked to the firm for any indebtedness due from Sunderland & Hillyer & Co.?

A. Thomas Young.

718 Q. When?

A. In 1873, when his first note became due.

719 Q. Where is Thomas Young?

A. He died a little while ago.

720 Q. His note was paid, was it not?

A. Not at maturity.

721 Q. How long after maturity?

A. Just as soon as we could get the banks to pay the checks.

722 Q. You mean that it was a failure of the banks of Washington at the time of the panic to pay the indebtedness?

A. Yes; to pay the indebtedness that they admitted was owed by them. It was not on account of a failure by Sunderland and Hillyer to provide money, but on account of the condition of things from the panic. I said that two or three times.

723 Q. You said that the firm of Kilbourn & Latta had $18,000 on hand belonging to Sunderland & Hillyer at the time of the dissolution of that firm. Who took that money after the dissolution of the firm?

1222 A. Kilbourn and Olmstead.

724 Q. How long did it take them to expend it?

A. Eight or nine months before it was all paid out.

725 Q. Were the creditors of Sunderland & Hillyer pressing at that time?

A. Not very much.

726 Q. If they had been pressing the firm of Kilbourn and Olmstead would have paid this money, would they not?

A. I think they would.

727 Q. Was the firm of Kilbourn and Olmstead agents for Sunderland & Hillyer in 1877?

A. Do you know that is rather a mooted question? I do not know exactly whether they were or not.

728 Q. What did they do for them?

A. Well, they did several things; they disbursed this money. One thing they did was to look after square 151, which was sold under a deed of trust, and instead of that property having to pay, as it was supposed it would under the terms of the trust, they allowed it to go to sale and pay the cash payment and got a very considerable increase of the credit at 6% interest, which I

1223 think was a great benefit, and was so recognized by Mr. Hillyer when I told him about it; he seemed quite satisfied.

729 Q. Did the firm do about the same in 1877 as it did previously?

A. It did very little in 1877.

730 Q. What difference was there in what the firm did in 1877 from what they did in 1876?

A. Well, in 1877 Mr. Latta rather assumed the care and management of the property, and as Sunderland & Hillyer had not said anything, although they knew of the dissolution of the firm and that

Kilbourn & Olmstead succeeded the firm, we rather held back with natural dividends from doing very much.

At this point the taking of this deposition was adjourned until Wednesday evening, the 15th inst., to meet at same place.

WM. T. S. CURTIS, *Examiner.*

1224 Met, pursuant to adjournment, on this the 15th day of February, 1882, at 7 o'clock p. m., at the office of J. F. Olmstead, and adjourned to meet to-morrow, the 16th inst., at the same hour and place.

Met, in compliance with last adjournment, on this the 16th day of February, 1882, at the office of J. F. Olmstead, at 7 o'clock p. m.

Present: C. J. Hillyer and J. H. Ralston, for compl't, and J. M. Wilson, for defendant, and Enoch Totten, for Mr. J. F. Olmstead.

Cross-examination of J. F. OLMSTEAD resumed:

Mr. HILLYER:

731 Q. Mr. Olmstead, I believe you identified this deposition once (holding in his hand the written testimony in the case of Kilbourn & Olmstead against Latta), but I will ask you to say again that this is your deposition in the case of Kilbourn & Olmstead against Latta?

A. I think it is; it purports to be.

732 Q. Your name is signed to it, is it not?

A. I have not seen it.

733 Q. Look at this page and see (handing the testimony to Mr. Olmstead).

1225 A. That is my signature, sir.

734 Q. That is your deposition, then, is it not?

A. Yes, sir.

Mr. HILLYER: Mr. Commissioner, I want to offer in evidence an extract from this deposition, which commences on page 11, at question 17, down to the word "bought," on page 14, in answer to question 19.

The extract referred to by Mr. Hillyer is made a part of this testimony, attached hereto, and marked "J. F. O. No. 6."

Mr. Wilson on this point examined that part of the record introduced and just alluded to, and said: The introduction of the portion of the deposition referred to is objected to by counsel for the defendant, James M. Latta, for the reason that the same is illegal, irrelevant, and incompetent, and because what the witness may have testified to in a suit different from this cannot be used as against the said defendant, James M. Latta, nor is the said portion of said deposition responsive to any examination-in-chief, nor is there anything therein which is relevant to the cross-examination in this case, nor has any foundation been laid by the cross-

1226 examination or by the examination-in-chief for the introduction of the portion of the deposition now proposed to be offered in evidence.

Mr. TOTTEN: The counsel in the case of Kilbourn and Olmstead against Latta, pending in this District, makes the same objection as Mr. Wilson.

Mr. HILLYER: I will ask you, Mr. Olmstead, in the deposition I have referred to and in which there is an abstract of the Altoona letter of Mr. Latta introduced in evidence, to look at that extract in your former deposition and recite the last two lines with which it ends, simply for the purpose of identifying what portion of the letter was in that deposition?

Mr. WILSON: I object to it as being irrelevant.

A. I do not know any more than I see here.

Mr. HILLYER: Will you please read the last two lines?

A. Else may affect unfavorably some negotiation.

735 Q. That is the conclusion of the extract that you produced in evidence in the case of Kilbourn & Olmstead against Latta, is it not?

1227 A. It appears to be the end of the portion here used.

736 Q. You have the extract before you, have you not?

A. I have.

737 Q. So that you can tell whether that is the ending or whether it is not?

A. I do not comprehend the question or its import at all.

738 Q. What you have stated are the concluding words in that extract, are they not?

A. No, sir.

739 Q. State, then, the concluding words of the extract in that former deposition in the case of Kilbourn & Olmstead against Latta?

A. Truly yours, James M. Latta.

740 Q. Between what you read first and the words "Yours truly, James M. Latta," there are marks indicating that some portion of the letter is omitted in that extract, are there not?

A. There are some asterisks.

Mr. HILLYER: I offer in evidence an extract from this same deposition, commencing at question 21, on page 20, and ending on page 25, with the close of the answer to question 23.

1228 The extract referred to by Mr. Hillyer is made a part of this testimony, attached hereto, and marked Exhibit J. F. O. No. 7.

Mr. WILSON: I make the same objection as above and for the further reason that the paper was not made out by the defendant.

Mr. HILLYER: From question 61, on page 44, to the answer of question 62, on page 45, I offer in evidence an extract from the deposition of Mr. Olmstead.

The extract asked to be introduced by Mr. Hillyer is made a part of this testimony, attached hereto, and marked Exhibit J. F. O. No. 8.

Mr. WILSON: I object to the introduction of this extract because it is immaterial and irrelevant, because no sufficient foundation has been laid for the introduction of the same, and because, if com-

petent evidence at all, it can only be competent as rebutting testimony.

Mr. TOTTEN: I also object to its introduction.

Mr. HILLYER: I now offer in evidence the question 64 and the answer thereto in this same deposition, on page 45, J. F. O. No. 9.

1229 Mr. WILSON: I object for the same reasons which I have given heretofore.

Mr. TOTTEN: I also object.

Mr. HILLYER: I wish also to ask Mr. Olmstead if what I present now to him is his original deposition, signed by him in the same case, taken in rebuttal?

The WITNESS (looking at the written testimony before him just referred to): It appears to be.

Mr. HILLYER: Is it?

A. I think there is no doubt about it.

Mr. HILLYER: I now offer in evidence, in the deposition of Mr. Olmstead in rebuttal in the before-mentioned action, the question 57 and the answer thereto, on page 149.

That portion of the record asked to be introduced by Mr. Hillyer is made a part of this testimony, attached hereto, and marked Exhibit J. F. O. No. 10.

Mr. WILSON: I object for the same reasons above given.

1230 Mr. TOTTEN: I also object.

Mr. HILLYER: Also, in the same deposition, I offer in evidence an extract commencing with question 96, on page 173, to and including the answer of question 99, on page 175.

The extract asked to be introduced by Mr. Hillyer is made a part of this testimony, attached hereto, and marked Exhibit J. F. O. No. 11.

Mr. WILSON: The introduction of the portion of the deposition alluded to is objected to for the reasons given above.

Mr. TOTTEN: I also object.

Mr. HILLYER: Will you take, Mr. Olmstead, the — given by you in chief and look at the first extract which has been offered in evidence, which is from the 11th page, question 17, to the word "bought," on page 14? I wish you to look at that extract and state whether or no the testimony as given by you there is correct, or whether there are any corrections or explanations in regard to the same which you desire to make.

1231 A. I do not notice any.

741 Q. I wish you also to look at the extract which I have offered in evidence, commencing at the top of page 20 down to and including the answer to question 23, on page 25, and state now whether what you there testified to is correct, or whether you desire to make any explanations in respect to the same.

A. I do not think that I do.

742 Q. I wish you now to look at the extract from that deposition, which has been offered in evidence, commencing on the 44th page with question 61, and ending with the answer to question 62, on the

45th page, and state in reference to that also whether you now say it is correct, or whether you desire to make any explanations in reference to the same.

A. I do not think I do.

743 Q. I wish you to do the same with reference to the extract from that deposition introduced, commencing with question 64, on page 45, including that question and its answer.

A. I do not know of any correction I want to make to that either.

744 Q. I will ask you also to look at your deposition in re-
1232 buttal in that action to the extract offered in evidence, commencing at question 57, on page 149, and including that question and its answer, and state whether you now say that is correct, or whether you have some correction or explanation which you wish to make in regard to it.

A. I have none.

745 Q. I wish the same in regard to the other extract in the rebuttal deposition, including question 96, on page 173, to and including the answer to question 99.

A. I have no correction to make to that, either.

746 Q. The statements made in these extracts are correct, are they?

A. I think they are.

747 Q. The second extract which has been offered, commencing at page 23 of the examination-in-chief and ending on page 25, purports to contain a copy of a declaration of trust made in April, 1873, by Kilbourn, Latta, and Olmstead, and signed by each of them, as to property held in the name of some member of the firm. In that extract is an entry of certain property held in trust for six persons or companies, commencing with Jay Cooke & Co. and end-
1233 ing with E. S. Parker. I wish to ask you if that portion of this extract relates to what you have called in your examination heretofore the Real Estate Association?

Mr. WILSON: That is objected to because it is immaterial, irrelevant, and incompetent, having no relation whatever to any of the property involved in this controversy.

A. That paper is not a declaration of trust. It is a simple memoranda made and signed by the individuals composing the firm of Kilbourn & Latta and showing for whom property therein specified were held.

748 Q. Will you answer my question?

A. I thought I had. What part have I not answered?

749 Q. Do you want that to go down or not?

A. I have no objection. It was a very long question, and I may have omitted something.

750 Q. You have answered nothing of the question, as it seems to me. You must understand the question was whether that portion of this paper which was introduced and which has now been presented to you, which purports to state that certain prop-
1234 erty was held in trust for the individuals named above, relates or does not relate to what you heretofore in your examination termed the Real Estate Association.

A. Well, I have not the slightest objection to answering the question, that I know of, but I decline to answer because there is nothing in that portion called for that referred in any manner to any property purchased by Sunderland, Hillyer & Company, Thomas Sunderland, or C. J. Hillyer, and is in no manner connected with this suit; that is the private — of no party in any manner connected with this suit or who has ever been.

751 Q. Have you seen an order of court which was made within the last ten days by Judge Wylie, holding court in equity of the supreme court of the District of Columbia, directing what papers were to be produced and what questions were to be answered by you in the case of Sunderland & Hillyer against Kilbourn & Olmstead?

Mr. WILSON: The question is objected to, first, because it is wholly irrelevant and immaterial; and, secondly, because, in fact, no
1235 order has been made by Judge Wylie in this case, nor has he any jurisdiction to make any order in this case.

Mr. HILLYER: Do you mean by that, Judge Wilson, in the case of Sunderland and Hillyer against Latta?

Mr. WILSON: I mean in the case in which we are taking this testimony.

Mr. HILLYER: I will ask the counsel of Mr. Latta if it was not agreed that the rulings of Judge Wylie, made in the case of Sunderland & Hillyer against Kilbourn & Olmstead, should cover the answers of the witness, so far as that matter could be controlled by the defense, in the case of Sunderland and Hillyer against J. M. Latta?

Mr. WILLSON: When the counsel for J. M. Latta is on the witness stand he can be examined by the counsel for the complainants in this case, and will then answer any question, that may be put to him.

Mr. TOTTEN: I want to have read that original question about this subject, and then we will see whether it is covered by the
1236 order of the court or not.

The question was re-read.

Mr. TOTTEN: Mr. Hillyer, let us inquire now about this. You want him to answer whether the property mentioned here as being in squares 181, 204, 157, 245, and 241 relates to the "Real Estate Pool;" is that what you want?

Mr. HILLYER: I am like Mr. Wilson; I decline to be examined. There is the question to the witness. I cannot put it any plainer than I have, and I cannot explain it.

A. I have.

752 Q. I understand that you decline to answer the question which I asked you about the meaning of that extract?

A. I do.

753 Q. After reading the paper which is contained in that extract, and which, as you have heretofore testified, was a correct copy of the paper signed by yourself, Latta & Kilbourn, do you now say

that the firm of Kilbourn & Latta had any interest in the Real Estate Association in the year 1872?

A. Well, I have answered that question once before, and I
1237 will answer it again in the same way.

754 Q. Well, proceed.

A. I make my answer the same as before, that they did have an interest.

755 Q. What was that interest?

A. Well, in the start it was to be one-half of the profits, if I remember rightly.

756 Q. It was not, then, a direct interest in the association, if I understand you now, but an interest under an agreement with the association that half the profits should belong to the firm of Kilbourn and Latta; is that correct?

A. Well, I have gratified you to some extent in your curiosity in hunting into other people's business than your own and into matters that do not pertain to this suit in any manner, and further I will decline to answer.

757 Q. What did you mean by saying that the firm purchased these several interests in the Real Estate Association subsequent to the date of this memoranda and by stating the amounts paid by the firm therefor?

A. I meant what I said. We bought out the several interests that were represented by the several parties.

1238 758 Q. Did you own one-half of them before that?

A. I have not said we did; I never claimed that we did.

759 Q. With whom was the agreement made that the firm of Kilbourn & Latta should have one-half the profits on real estate purchased by the Real Estate Association?

Mr. TOTTEN: I object to that as wholly irrelevant.

Mr. WILSON: I join in that.

A. I will gratify your curiosity a little in regard to the Real Estate Association, and perhaps in a measure answer a question that I declined to answer a few minutes ago; and, partly to gratify your curiosity, I will say that the Real Estate Association was not formed by the people who are represented in this paper. It was formed by the firm of Kilbourn & Latta with W. S. Huntington. The people composing that Real Estate Association never knew each others as members of that association, never knew what their property was, and they put in so much money with the hope of making a
1239 profit. The Real Estate Association was, in fact, Kilbourn & Latta, and the terms and conditions were all made by the firm of Kilbourn & Latta and W. S. Huntington. They were changed several times after it was started.

760 Q. Did Mr. Eldridge ever put up any money for the Real Estate Association?

Mr. TOTTEN: Let me object to that and ask Mr. Hillyer what he wants to know that for.

Mr. HILLYER: I don't deem it necessary or proper to explain exactly what my motives are. I state that what Mr. Olmstead has

stated for the purpose of showing whether what he heretofore stated is correct or not in relation to property purchased by Sunderland and Hillyer. Further than that I do not wish to state.

Mr. WILSON: Inasmuch as these inquiries have not the slightest relation to any property that was purchased by Sunderland and Hillyer, or to any property in which they ever had any interest, or to any matters that are involved in this suit, I object to the question as being wholly immaterial and irrelevant, and will now
1240 state that if the counsel for the complainants can indicate any relations that this property had about which he is inquiring to the matters involved in this suit I will withdraw the objection.

Mr. HILLYER: Perhaps my subsequent inquiries will answer the counsel for the defendant.

Mr. WILSON: To that suggestion the counsel for the defendant replies that if the counsel for the complainants has any questions to ask which indicate any relation to the matters involved in this suit that it is time to ask them and not to be asking questions that are wholly impertinent to the case.

Mr. HILLYER: Counsel for complainants says that upon cross-examination he has a right to use his own judgment to a considerable extent as to the pertinency of the questions he may ask.

761 Q. Did the firm of Kilbourn & Latta get one-half the profits that were realized upon the purchase and sale of square 156?

A. I have stated that the profits arising from that square, in my judgment, went into other property that was purchased.

1241 762 Q. I wish you to answer my question, whether or no the firm of Kilbourn and Latta got one-half the profits out of that property?

A. I have answered.

763 Q. Do you refuse to answer it further?

A. I cannot.

764 Q. You do not know whether the firm of Kilbourn & Latta got one-half of those profits or not?

A. There were no profits made then. The Real Estate Association had been changed before that three or four times, and I do not know now exactly how it did stand then.

765 Q. That square was bought by somebody for $65,000 and something. It was put in the name of Hallet Kilbourn, as trustee. You have stated in the account in your books that the purchase was on account of the Real Estate Association and was sold, as shown by your books, to Sunderland & Hillyer for $91,000 or $92,000. There was therefore a profit of twenty-six and odd thousand dollars. I want to know whether the firm of Kilbourn & Latta got any portion of that profit; and, if so, what?

1242 A. I have stated that the firm of Kilbourn and Latta were interested in the profits of the Real Estate Association?

766 Q. How?

A. I said that they were first interested to the extent of half the profits.

767 Q. How many interests were there in the Real Estate Association?

A. Well, I decline to say anything further in regard to the Real Estate Association.

768 Q. Did the other members or any member of the Real Estate Association ever get any portion of the profit realized upon the purchase and sale of square 156; and, if so, what portion?

A. As that is a matter entirely between the other members of the association and Kilbourn & Latta and has no lot or part in this business, I think I shall decline to say anything about that, any further than this, that the Real Estate Association was at that time speculating in real estate to a large extent, and might have bought one piece to-day and sold to-morrow and turned into another piece bought the day following and so on. It is impossible to answer the question in any way.

1243 769 Q. Are you advised by either your own counsel or counsel of Latta not to answer that question?

A. I have not had any advice upon the subject.

Mr. TOTTEN: I suggest that this is not a proper question to put to a witness.

Mr. HILLYER: I want to know whether the witness is making these statements on his own responsibility or by advice of counsel?

Mr. TOTTEN: It makes no difference.

Mr. HILLYER: Is there any account in your books with the Real Estate Association?

A. There is.

770 Q. In that name?

Mr. TOTTEN: I object to that question because it has already been gone over once. The whole subject has been disposed of.

A. There is.

771 Q. Will you produce the ledger account, if there be any?

A. Yes; if you will show me what that has to do with this case.

1244 772 Q. I am not here to show you what anything has to do with the business nor are you to judge, as the judge of the supreme court has told you. I want my question answered.

A. With all due respect to the judge of the supreme court, I fail to see where he has told me anything of that kind. I think your advice on that subject purely gratuitous.

773 Q. Do you refuse to answer the question?

A. I do.

774 Q. You refuse to produce the account, if I understand you, of that Real Estate Association?

A. I am willing to produce any account called for in the order of the court or any paper or account connected with the business of Sunderland & Hillyer, and I have produced not only those, but papers and accounts and books that had nothing whatever to do with it in any manner.

775 Q. Then, do I understand you that you decline to produce this account?

A. I do decline to produce this account.

Mr. TOTTEN: You are willing, Mr. Hillyer, are you not, to go before court to-morrow and submit this question and let it go
1245 for to-night until we see if Mr. Olmstead is bound under this order to go outside and produce this account for your inspection?

Mr. HILLYER: I have been before the court once and, as I understand it, the court has ruled upon it. I will take my own methods for getting answers to these questions.

Mr. WILSON: I desire to say that we are entirely willing that the complainants in this case shall have any evidence that has any bearing whatever, no matter how remote, upon the issues that are joined in this case, and we are willing to submit to the supreme court of the District of Columbia to-morrow morning, or any other time that will suit the convenience of the complainants or their counsel, the question whether or not the examination that is here being pursued is one that should be pursued and whether or not Mr. Olmstead should either answer these questions or produce, for the inspection of the complainants or their counsel, the accounts to which he has been referring, and we now further offer to pro-
1246 duce, for the inspection of the complainants or their counsel, any and every entry, book, or paper that has any relation whatever to the matters that are alleged in complainants' bill.

Mr. TOTTEN: Or any piece of property mentioned in their bill or any of the bills?

Mr. HILLYER: I ask for the production of the account of the Real Estate Association in the books of the firm of Kilbourn and Latta in the year 1872.

A. I decline to produce them.

776 Q. And I ask Mr. Olmstead whether or not he will produce them?

A. I answered your question. I said I declined.

777 Q. If I have understood you correctly you have said that one-half the profits made on square 156 went to the firm of Kilbourn & Latta under some arrangement or agreement; what became of the other half?

A. It is like a good many things you have understood, you didn't understand it rightly.

778 Q. I will ask you now whether or not that is a fact?

A. I decline to say anything about it further than I have said; I explained it very fully.

1247 779 Q. Is there what you call a K., L. and O. account in your books?

A. There is.

780 Q. Will you produce it—the ledger account, I mean?

A. So far as it relates to any property connected with your matters.

781 Q. I ask you to produce the account in the ledger which you

term the K.; L. and O. account, and I will judge what is impertinent or not.

A. I will produce them.

782 Q. Does that account correspond in reference to purchases of real estate with the statement which has been introduced or offered as an extract in your testimony in the case of Kilbourn & Olmstead against Latta?

Mr TOTTEN: I object to that question; if he wants to know let him look at it.

A. I do not know exactly what you mean by correspond.

783 Q. I mean, does it show the same facts and show them in the same way?

A. No, sir.

(Mr. Hillyer here looks at what is commonly called the K., L. and O. account.)

1248 784 Q. Upon looking at this account, Mr. Olmstead, I do not see that it refers to any of the transactions or purchases by Sunderland, Hillyer and Co. Am I correct? Or to any transactions or purchases of property subsequently bought by Sunderland, Hillyer & Co.

A. You are not correct You didn't know what you were looking at.

785 Q. Is there anything in that account referring to square 115?

A. No, sir.

786 Q. Is there anything in that account referring to square 155?

A. No, sir.

787 Q. Is there anything in that account referring to square 156?

A. No, sir.

—. In the extract of testimony which has been introduced from your former deposition in reference to profits made by the firm of Kilbourn & Olmstead during the existence of the firm it is stated by you that the profit from commissions amounted to between $60,000 and $70,000, and that the profits upon speculation or from the purchase and sale of real estate, as you explained it
1249 then, amounted to about $40,000. Was the $25,000 made by the firm in the transaction in regard to square 115 included in either of those items; and, if so, in which?

A. I have never given any such testimony.

789 Q. Will you read the question and answer which has been offered as evidence relating to that matter included in the question and answer as in that testimony and state what you did mean by the language then used in that respect?

A. That does not refer to your question in any manner.

790 Q. Will you explain what it did refer to?

A. It referred to the profits made by Kilbourn and Latta.

791 Q. That is precisely what I am asking you about.

A. If the stenographer reads his notes you will find that you did not.

The question referred to was read by the stenographer.

Mr. HILLYER: In my question I used the name of the firm of Kilbourn and Olmstead where I should have used that of Kilbourn & Latta. Will you answer the question with that mistake corrected?

1250 A. I do not think it was. If you take that answer by itself it might mean one thing, and if you take it in answer to the bill that we were answering at that time it would mean another. It would be necessary to take the whole bill and whole deposition in order to see the force of that answer, and it then might mean quite a different thing. An attempt was made in that bill to show that the profits on speculation were very small, and a sufficient amount was put in there to show that a very considerable amount was made in the speculation in real estate. I will say further that our books do not show the beneficiaries, and in some cases the actual profits made in our various operations in real estate and in other things. We had in our employ a book-keeper whom we thought it was not advisable to give our entire business to, but to have so much of our business as was necessary to keep our accounts correct with our customers and a record of our business. He was disposed to be a little talkative—to know things sometimes more than he really did—and I think it was a very wise con-

1251 clusion that we came to. The entries in regard to square 115 were posted in the name of George Taylor, who had no interest in it whatever. The entry in regard to lot 17, in square 158, was passed through that book-keeper, who had no interest in it whatever, and, judging from the questions that have been put to me in this cross-examination, I think that we were wiser than we knew, as it is quite apparent that the book-keeper or somebody else who was conversant—and I do not know of any—with our business has been furnishing some information to his patrons, as the information was in the same order of the information that we furnished to people when he was in our employ, which was rather meagre.

792 Q. Have you any further explanation to make than the statement contained in the extract to which your attention has been called in your former testimony?

A. I have not.

793 Q. Is this extract which I showed you from your former deposition, and which purports to be an extract from a letter written by Mr. Latta in August, 1872, a correct extract from a letter

1252 so written by him?

A. I presume it is correct.

794 Q. Do you know it is correct?

A. I have not compared it. You have the letter in evidence and here is the extract, and I presume it is correct.

795 Q. Did you state in that deposition that it was correct?

A. No; I did not. I offered the letter in evidence.

796 Q. Was the letter which you offered in evidence a correct copy?

A. I say I offered the letter in evidence, and as this is a copy from that letter I presume this is correct.

797 Q. Calling your attention to the letter of Mr. Latta, dated

Aug. 17, 1872, I wish to ask you to whom you understood he referred when he said "S."

Mr. WILSON: I object to that question because it is immaterial.

—. Well, I do not know now, I am sure; but, from its speaking of square 197 and that being one of the properties that we sold to Sunderland or Sunderland & Hillyer, I suppose he refers to Sunderland.

1253 798 Q. Did you understand from the remark in that letter that Mr. Latta meant that the property should be purchased by the firm, as brokers, for Sunderland or that it should be purchased by the firm for the purpose of being sold to Sunderland?

A. I do not understand anything about it.

Mr. WILSON: The question is objected to because the understanding of the witness is not evidence in this case. The letter is there and speaks for itself.

Mr. TOTTEN: I object to it because the letter is dated long after the transaction with Sunderland ceased.

A. After the lapse of eleven years I am thoroughly unable to say what he meant by it in any manner, except so far as it reads.

Mr. HILLYER: How do you understand it now?

A. I have just answered that question.

799 Q. How is that?

A. I say I have just answered. The letter is here and speaks for itself, whatever it is.

1254 800 Q. Were you the agents for the Real Estate Association in the purchase of property?

A. No, sir.

801 Q. Were you the agents for the Real Estate Association for the sale of property?

A. The Real Estate Association was Kilbourn and Latta and Kilbourn and Latta was the Real Estate Association, and that a speculative account of the firm.

—. Were you the agents for the persons composing a company or association of any kind dealing in real estate whose names are set forth in the paper which has been offered in evidence and shown to you, signed by Kilbourn, Latta & Olmstead, as a declaration or memoranda of trust, the names in the declaration commencing with Jay Cooke & Co. and ending with E. S. Parker?

Mr. WILSON: The question is objected to because it is immaterial and irrelevant.

Mr. TOTTEN: It calls for a legal opinion or rather an opinion upon a legal question.

A. I have explained very fully the general ideas of the
1255 Real Estate Association and I cannot answer any further.

803 Q. Was there any company, society, or association of individuals called and designated by you in business transactions as the Real Estate Association?

Mr. WILSON: I object to that question for the same reasons given heretofore.

A. There was.

804 Q. Was that association composed of the persons whose names are in the extract to which I have last referred?

Mr. WILSON: I object to that for the same reason already given.

A. Are you trying a case for the Real Estate Association?

805 Q. I am trying my own case.

A. I thought you were, you were wandering round so. I decline further to answer questions in regard to the Real Estate Association.

806 Q. Did any member of that association ever receive money as a portion of the profits realized upon the purchase and sale of square 156?

A. No, sir.

807 Q. Who did realize those profits?

1256 A. I have stated that the profits arising from all the sales of the property in the Real Estate Association, so far as it has been sold, was put with other speculations, and I have some of it on hand now, being owner of the whole thing, which I would be very glad to dispose of at twenty per cent. less than cost.

808 Q. Did you ever tell any member of that association that you had sold or partly sold, for its benefit, square 156?

A. I don't know whether I ever did or not.

809 Q. Have you any recollection of having told any member?

A. I have just answered your question.

810 Q. In the letter written by Mr. Latta from Altoona, which has been introduced, he speaks of dividing up the northwestern part of the city for different persons or companies. Among them he mentions the Real Estate Association, Dr. Stearns, Sunderland and Hillyer. Were the relations of the firm the same to each of the persons or companies then mentioned?

A. They were not.

811 Q. State what the difference was.

Mr. WILSON: I object to that, for the reason that it is im-
1257 material to this case what the relations of the firm of Kilbourn & Latta were to persons other than Sunderland and Hillyer and no concern with the business of other people and the rights of Sunderland and Hillyer did not in any way depend upon what the relations were between Kilbourn and Olmstead and other persons with whom Sunderland and Hillyer had no connection.

Mr. HILLYER: The question will be read.

The question was re-read.

A. I do not know that I am competent to answer that question. It would require perhaps a record of another four or five hundred pages more than we have got now of matter that does not belong to this business.

812 Q. Have you any further answer to make to the question?

A. No, sir.

813 Q. Was the firm of Kilbourn & Latta the agents of Dr. Stearns in purchases of real property?

Mr. WILSON: I object to that question. There is a controversy in court now as to whether they were the agents of Dr. Stearns.

1258 A. I decline to answer what the relations were of the firm with anybody not connected with Sunderland & Hillyer.

Mr. WILSON: The counsel for the defendant now invites the counsel for complainants to go before the court to-morrow morning, or at any time that will suit his convenience, and take the judgment of the court as to whether or not such a question should be answered by the witness.

Mr. HILLYER: In 1872 Mr. Hillyer writes a letter in which he partitions out the city between certain parties. One of those parties was Sunderland, Hillyer & Co, another was the Real Estate Association, and another Dr. Stearns. Now, what I wish to know is whether the relations of the firm in respect to the agency in purchasing property — the same with each of those named in that letter?

Mr. WILSON: Counsel for defendant objects to the witness answering that question, and requests the witness to decline to answer, to the end that the propriety of the question may be submitted
1259 to the court, and now again invites the counsel for the complainants to go before the court to-morrow morning, or at any time that will suit his convenience, and submit the question to the court for its determination, and hereby agrees to waive all matters of substance or form for the purpose of having the opinion of the court on that question.

Mr. TOTTEN: I concur in that.

Mr. HILLYER:

Q. Did you charge commissions to Dr. Stearns on purchases of property made by him in 1872?

Mr. WILSON: The question is objected to for the reason that it is wholly immaterial, and the same tender is now made to the counsel for complainants by the counsel for defendant as above.

Mr. HILLYER: What is the answer?

A. I decline to answer.

Mr. TOTTEN: The attention of the parties complainants in this case is invited to the testimony in equity in a case pending
1260 in the supreme court of the District of Columbia, No. 5919, for an answer to the question. They can read it at large there, and he has now before him two large volumes of testimony.

Mr. HILLYER: I wish you would produce the ledger account of Hallet Kilbourn, trustee, in order that the commissioner may make a copy of it and make it part of this testimony.

The ledger account last above referred to is made a part of this testimony, attached hereto, and marked J. F. O. No. 12.

814 Q. If I understand you correctly, the entry in regard to the purchases in 1871 of square 156 — Mr. Young was the person who conveyed the property to Hallet Kilbourn, trustee; is that correct?

A. No more correct than a good many things you thought you understood about the ledger.

815 Q. Who did convey to Hallet Kilbourn, trustee?

A. James M. Latta, trustee.

816 Q. Square 156, I am speaking of.

A. So am I.

817 Q. In 1871?

A. Yes.

1261 818 Q. Well, to James M. Latta, trustee, then, if you prefer it that way. Your book shows that commissions were charged to Mr. Young. What were they charged for?

Mr. WILSON: I object to the question because it is immaterial.

A. For services rendered and because he agreed to pay them.

Mr. HILLYER: Were you the agents for Thomas Young in that transaction?

A. In the sale of that property—yes, sir.

819 Q. Then I understand you that the purchase was made for the benefit of the Real Estate Association, in which you were to have one-half of the profits. Is that correct?

A. That is about so, if that was the understanding with the Real Estate Association at that time.

820 Q. What is the date of the entry of purchase from Morgan of lot 17, in square 158?.

A. That was all copied the other day.

821 Q. I do not believe the date was given, and it will take but a moment to ascertain it.

A. The date on which it was closed was the 30th of May, 1872. The deed shows the date, and I did not have that.

1262 822 Q. That was the date, I understand, in your books of the purchase from Morgan?

A. That was the date it was closed.

823 Q. I want the date of entry which was read the other evening in reference to the purchase of this square from Morgan?

A. Well, my recollection is that it was the 20th of May.

824 Q. I do not want your recollection, I want the date given in the book.

(The witness here produced the book referred to for the purpose of refreshing his memory.)

A. It was the 23rd day of May, 1872.

825 Q. What was the character and standing of the trustees of the charitable institution who owned square 115 in 1872?

Mr. WILSON: The question is objected to because it is immaterial and irrelevant. The characters of these gentlemen are not involved in this issue, and the counsel for claimants is invited to go before court to-morrow morning and take the judgment of the court

whether or not such a question as that is a proper one or not to be asked in this case.

1263 A. I do not know what their characters were, what their standing was, or where they stood at all.

Mr. HILLYER: Were they not well-known citizens here in Washington—men of business, intelligence or reputed so to be?

A. That I do not know.

826 Q. Mr. Bowen had been mayor of the city, had he not?

Mr. WILSON: I object to that question because it is immaterial and irrelevant.

Mr. HILLYER: What is the answer?

A. He tried to be.

827 Q. Did you then suppose or do you now suppose that they were ignorant of the value of that property and the demand for it that you say existed at that time?

Mr. WILSON: That question is objected to.

A. I am sure I am not able to remember now what I then supposed.

Mr. HILLYER: Have you looked up the stubs of the check book to which I called your attention in a former examination?

1264 A. I have not, but if you tell me what stub you want perhaps I can find it.

828 Q. I want the stub of the check which paid the $8,000, or about that, to the Institution for the Education of Colored Youth on the purchase of the property from them.

A. I have the stub and will produce it, and the commissioner may copy it.

829 Q. I merely want to know the date, &c.

A. Check 350; first National Bank, Washington, D. C., May 30, 1872; institution for the Education of Colored Youth (to order of George S. Baker, secretary), for square 115, $6,950.00.

830 Q. This check was given for the cash payment, part of the purchase price, was it not, for that square?

A. Yes, sir.

831 Q. What commissions were charged by the firm of Kilbourn and Latta on the sale *of* to Sunderland and Hillyer of square 155, and to whom the commissioner*s* were charged?

A. Commission is charged to the account of George Burgess.

832 Q. How much commission?

A. $5,243.84. I think that is 5 per cent., and maybe more.

1265 833 Q. Will you read the entry in the book just as it occurs?

A. George Burgess, commission account, to commission, $5,243.84.

834 Q. What is the date of it?

A. Eighth day of June, 1872.

835 Q. You read an entry the other evening of payment to Burgess and Orme. What is the date of the payment of the cash part of that purchase?

A. That same date.

836 Q. What is the date of the entry for expenses, referring to the payment of some money to Eldridge, which you read before?

A. June 11th. That $2,000 came out of this $5,000 commission account.

837 Q. If I understand you, the firm, by agreement with Eldridge, was to take out commissions and then divide profits. How did you figure that up between yourselves and Eldridge?

A. I don't exactly know now. The entry shows that we got $3,243.84 and he got $2,000.

838 Q. The entries upon this subject have all been read, have they not?

A. They have.

839 Q. How did your firm advertise in 1872? What was the character of the advertisement of the firm in reference to the
1266 business which they advertised to perform in 1872?

A. Real estate brokers.

840 Q. There was nothing in their advertisement referring to the purchase and sale of real estate beyond what would be included in the terms real estate brokers, was there?

A. I do not know that there was.

841 Q. You are not confident that there was not, are you? Have you the original of letter of instructions referred to in the Altoona letter of Mr. Latta, which has been referred to in evidence?

A. I do not think I have.

842 Q. When were squares 66 and 93 deeded to James M. Latta as trustee?

Mr. TOTTEN: I object to that. The deed itself will show.

Mr. HILLYER: I do not want the deeds. I want the date.

A. I do not know that I can give the date further than in this account current in this testimony, which shows the settlement, and it was at that time, was it not?

1267 843 Q. Was it at that time?

A. Well, just when it was I do not know.

844 Q. Was it about the month of April, 1873?

A. I have no recollection and I have not the papers. You have them, I suppose.

845 Q. Until the property was deeded to James M. Latta, trustee, the firm of Kilbourn & Latta had nothing to do with those squares, did it, after the purchase had been made?

A. Well, we had just as much to do with them after as before and before as after. I am sure I do not know of anybody else having anything to do with them.

846 Q. What was the subject-matter and nature of a controversy in the suit of Kilbourn and Olmstead against Latta, in which the deposition was taken to which reference has been made?

Mr. TOTTEN: I object to that question because it is a matter of record which Mr. Hillyer has before his eyes at this moment to look at. It is quite a complicated question, Mr. Hillyer, and requires a judicial mind to settle.

Mr. WILSON: I also object to the question for the same reason.

1268 Mr. HILLYER: I think I am entitled to know from the witness. Please state what it was.

A. I think the record answers that a great deal better than I can. I was not my own attorney in that case. My attorney drew the papers, and I suppose he knows better than I do.

847 Q. What I want to know is the general nature of the controversy upon which that suit was based?

Mr. WILSON: What suit do you refer to?

Mr. HILLYER: Kilbourn and Olmstead against Latta.

Mr. TOTTEN: The controvery is, then, whether the statute of frauds operates there. I answer for him.

Mr. WILSON: I object to it because the record is the best evidence of what the controversy is.

Mr. HILLYER: What is the answer to the question?

Mr. TOTTEN: We object to that question, because the record is before Mr. Hillyer.

1269 Mr. HILLYER: I am not asking the question for my own information, but for that of the court, and I wish the witness to answer.

A. I do not know that I can answer the question any better than I have.

Mr. WILSON: I object to it because it is immaterial to this case. The matters involved in that suit have no relation, in any manner, shape, or form, to any transaction of this firm with Sunderland & Hillyer and have no relation to any property that is involved in this suit or to any other matter that is involved in the suit in which this deposition is being taken.

Mr. HILLYER: I still insist that the question be answered, and I will state that the object of the question is to show under what circumstances the deposition of Mr. Latta and Mr. Olmstead, extracts from both of which have been introduced in evidence, were made.

A. The object of that suit, as far as I can explain, is to recover money which we claimed was part of the profits arising

1270 from our business of partnership and which we claim he received and did not divide.

848 Q. Was it not in a general way that Mr. Latta had been secretly interested, as claimed by Kilbourn & Olmstead, in certain real estate transactions with Dr. Stearns upon which he had realized a profit which ought to have gone to the benefit of all the members of the firm?

A. That is just what I stated in my answer exactly.

849 Q. What notes did you sign for Sunderland and Hillyer?

A. Notes that I signed?

850 Q. Yes.

A. I do not remember signing any.

851 Q. What notes did Kilbourn sign, to your knowledge?

A. I don't remember what notes he signed, or whether he signed any.

852 Q. There was a loan made on account of Sunderland, Hillyer & Co. in 1876, was there not?

A. There was.

853 Q. Who was it made from?

1271 A. General Jeffries represented it. I do not know whose money it was.

854 Q. To whom was the note made payable?

A. It was made payable to Jeffries, trustee, I think. They were notes. There were two of them.

855 Q. How came Kilbourn & Latta to take bonds instead of cash for that loan?

Mr. TOTTEN: I object because that has nothing to do with this case or the other case in Indiana.

A. Well, we tried everywhere to borrow money for Sunderland and Hillyer. The condition of real estate in this city was such at that time it was next to impossible to get money on unimproved property, and I do not know of any person who would loan money at that time on unimproved property. I went to New York once and to Philadelphia several times. Twice I thought I had arranged to get money enough for Sunderland and Hillyer to take up all their indebtedness and that failed, and it was necessary to have money and Gen. Jeffries told us about having these bonds and

1272 that we could take these bonds at whatever price we did take them. I think it was par. I know we then took them into bank and borrowed money on them as collateral with our notes, and it was about the only way out for Sunderland and Hillyer at that time.

856 Q. Who negotiated that loan?

A. Well, I think Kilbourn & I did.

857 Q. On your books you charge a commission of $500 was paid Gen. Jeffries. Who got that money?

A. Gen. Jeffries.

858 Q. Did you ever state to Sunderland & Hillyer, prior to taking these bonds, that you intended to borrow bonds instead of money?

A. I don't think we did.

859 Q. They did authorize you, did they not, to make a loan of $50,000?

A. They did.

860 Q. Do you know how much discount Sunderland and Hillyer paid on these bonds?

A. Not much; I don't know now.

861 Q. Did they pay a $1,000?

A. I don't think they paid anything like that sum.

Mr. TOTTEN: I object to the question and answer because

1273 it has nothing to do with this controversy.

Mr. HILLYER: The bonds so obtained were deposited as col-

lateral, were they, and the money obtained upon the endorsement of Kilbourn and Latta or some member of the firm. Is that it?

A. It was the notes of James M. Latta, endorsed by the firm of Kilbourn and Latta.

862 Q. And these bonds were the collateral for obtaining that money, were they?

A. Yes, sir.

863 Q. Were Kilbourn and Olmstead agents of Sunderland and Hillyer in 1877?

A. I said the other night I didn't know what they were.

864 Q. What did the firm of Kilbourn & Olmstead do with reference to the business of Sunderland & Hillyer in 1877?

A. Didn't do a great deal; looked after their interests as much as we could without seeming to push ourselves; we did not like to do anything, as we were not asked to do so.

865 Q. What did Latta do in reference to their business?

A. I don't know what Latta did.

1274 866 Q. Kilbourn and Olmstead had $18,000 in their hands at the beginning of that year to disburse for Sunderland and Hillyer, did they not?

A. Yes, sir.

867 Q. Why did they not give it to Latta or Sunderland and Hillyer?

A. Because we did not think that Latta was entitled to receive it, and we thought, under the dissolution agreement, that the continuation of the business of Sunderland and Hillyer would remain with us, and Sunderland and Hillyer made no demand for it.

868 Q. Did you have any reason to change your opinion that the business of Sunderland and Hillyer was to remain with you that year?

A. No, sir; we did not change our opinion for more than a year after that, as both Sunderland & Hillyer, when they were here in 1878, frequently expressed themselves as satisfied and supposed that, as they said to me, that as the firm had dissolved the business was to go in our hands.

1275 769 Q. Was there not, in July or August of 1877, $5,000 put into the hands of Kilbourn & Olmstead, in addition to what they then had, for the purpose of being paid to Henry A. Willard on account of money due on square 151?

A. I don't remember of any such sum being placed in their hands for that purpose. It may be that the account current shows.

870 Q. I wish to know whether you have any recollection of $5,000 being put into the hands of Kilbourn and Olmstead for that purpose?

A. I have not. It is barely possible it was done, but I do not think it was. If it is not in the account current which was rendered by Kilbourn and Olmstead to Sunderland and Hillyer in July, 1878, we did not get it.

871 Q. Have you no recollection of $5,000 being put into your hands by Mr. Latta, he having received that amount from Mr. Hill-

yer for the purpose of making a payment upon the indebtedness due to H. A. Willard?

A. I have not any recollection of it having been done, but know thoroughly well that it was not done.

1276 872 Q. If Mr. Latta so represented, then it was not correct?

A. I do not think Mr. Latta ever represented that, and if he did it was not correct.

873 Q. I understand you, then, to say that Kilbourn and Olmstead did not have $5,000 or any portion of that sum given them for the purpose of being paid to Mr. Willard, through Latta or Sunderland and Hillyer, during that year?

A. Nor at any other time after the dissolution of the firm.

874 Q. Did not you write a letter to Mr. Latta acknowledging the receipt of this $5,000 and explaining to him the reason why it was not paid to Mr. Willard in 1877?

A. No, sir; I don't think I did.

875 Q. Are you certain that you did not?

A. I am very positive that I did not.

876 Q. I will refresh your recollection. Did you not, in a letter which was written Latta in answer to a telegram or letter from him, which letter was prompted by a telegram received from Mr. Hillyer in Virginia City in reference to the payment of this money, admit that you had the $5,000 in your hands, and stated that it would be paid as soon as Mr. Latta signed certain papers or did certain

1277 acts which Kilbourn & Olmstead insisted should be done as a preliminary?

A. No, sir.

877 Q. Mr. Latta, then, if I understand you, did not, in 1877, give to Kilbourn and Olmstead or either of them any money to be paid out on account of Sunderland and Hillyer to H. A. Willard?

A. No.

Mr. TOTTEN: In behalf of Mr. Wilson and myself I enter an objection here to all the questions and answers relating to this $5,000 business because it is irrelevant and incompetent testimony.

878 Q. What did Kilbourn and Olmstead have to do with the grading of lots 73 or 10, in square 158, which was graded in 1877?

A. They were all graded under our arrangement. We had to attend to it. We had to go up there and see about it and take a surveyor up there to make measurements every Saturday to pay off by. I know I came very near getting sunstruck up there one day. I stood there till I had to be carried off the place.

1278 879 Q. Who employed Kilbourn and Olmstead to do this?

A. Well, I don't know as anybody did.

Mr. WILSON: I object to that.

880 Q. Where was Mr. Latta at the time that grading contract was being executed?

A. Well, I think he was here when it was commenced, but he was not here while it was being done; that is my impression.

881 Q. Kilbourn and Olmstead charged commissions for attending to it, did they not?

A. My impression is we charged $100 for our services in that matter.

882 Q. Did Kilbourn and Olmstead or either of them have anything to do with the making of this contract for the grading?

A. No; I think not. I know they did not.

883 Q. Whatever was done in that respect was done by Mr. Latta, was it not, or at least by somebody else besides Kilbourn
1279 and Olmstead?

A. Yes, sir.

884 Q. Do you know who were the contractors for doing that grading?

A. I think a man by the name of Evans.

885 Q. What Evans? Who is he?

A. A man who does that kind of work around here.

886 Q. Do you know his first name?

A. I think his first name is Frank.

887 Q. Of the $18,000 which was in the hands of Kilbourn and Olmstead an account was rendered, was it not, in the fall of 1877 by Sunderland and Hillyer in reference to its disbursement, and which is in evidence, and which shows that $2,715 was still in the hands of Kilbourn and Olmstead undisbursed; is that correct?

A. At the time that statement was made, yes, sir.

888 Q. Did that $2,715 remain in their hands until the summer of 1878?

A. I think it did, if those dates are right.

889 Q. Why wasn't it paid to Sunderland and Hillyer or on their account?

A. Because of a controversy between Kilbourn and Olmstead and Latta.

1280 890 Q. Was there any controversy about this amount being due Sunderland and Hillyer?

A. There was not.

891 Q. Then the controversy between Kilbourn and Olmstead and Latta would scarcely explain why this $2,715 was not paid either on account of Sunderland and Hillyer or to them. What I ask is, why it was not paid either on their account or to them?

A. Well, I cannot give any other answer than I have to that—they made no demand for it.

892 Q. Did Kilbourn and Olmstead owe Latta money at the time of the dissolution of the firm?

A. Well, I don't know what that has to do with this case, and I decline to say.

893 Q. That is not for you to judge, what it has to do with this case, as I stated before. I wish an answer to the question.

A. I decline to answer.

894 Q. Who got the $22,000 that was taken out, at the time of the dissolution of the firm, on account of the care and management? I don't mean by that to whom it was credited, but — actually got the money.

A. The then members of the firm of Kilbourn and Latta. I have stated, I think, that the accounts were rendered to Sunder-
1281 land and Hillyer, taken from the account current of 1872; and the various accounts rendered to them afterwards, which they have, or should have, will show that from 1872, or 1873 perhaps it is, to the dissolution of the firm there was about the amount of commissions which was charged to their credits, as the books show. It was the purpose of the firm to keep about that much in advance. The charge of commissions to Sunderland and Hillyer and Thomas Sunderland was not made on the books until about the time of the dissolution, somewhere between the 20th and 30th of December, 1876.

895 Q. You decline to state, then, who got the money—I mean to say the $22,000 which was charged Sunderland and Hillyer at the time you mention?

A. I have not declined to say. I stated that the three members of that firm got it, in answer to your other question.

896 Q. I understand you that the money when paid went to the credit of the firm and, of course, that each member of the firm was credited with his portion; but what I wish to know is who actually obtained the money?

1282 A. Why, I have answered three or four times that the three members of the firm got the money. I will explain it in another way: In the dissolution of that firm of Kilbourn and Latta account was taken of the fact that Sunderland and Hillyer owed us, according to our charges or understanding between each other, $5,000 per annum, and it was charged up simply to finish the records of the firm. The money we had had from year to year right straight along. I don't know that all the time we were $5,000 ahead of all the accounts, but we intended to be.

897 Q. Now, I wish you to answer distinctly or refuse to answer whether at the time of the dissolution of the firm of Kilbourn and Latta, Kilbourn and Olmstead and Latta, — and whether this $22,000 formed a portion or all of the payment to him of that indebtedness.

A. So far as the question goes — to what we owed Latta or what about our settlement, I decline to answer. I will state fully that, so far as the $22,000 charged to Sunderland and Hillyer or Thomas Sunderland is concerned, it had nothing to do with our settlement with Latta. It was a mere form of closing accounts.

1283 898 Q. You decline, then, to answer that question, do you?

A. I have answered it.

899 Q. In the summer of 1878 was there a note given by Kilbourn and Olmstead for $2,715 to Sunderland and Hillyer?

A. There was.

900 Q. Why did they give the note instead of paying the money?

A. Well, I do not remember now. It was all satisfactory to Mr. Sunderland, with whom we made the arrangement. Perhaps we did not have the $2,715 to pay. I am not sure about that. Or, if we did, we might have had better use for it. As we had to pay no interest on this note, it was better to use it in that way.

Mr. TOTTEN: Was there any doubt about the note being paid, Genereal?

Mr. HILLYER: Let me go on in my own way. You ordered this $2,715 to be paid in order to show a receipt for it in the suit between yourself and Latta, did you not?

A. We wanted to show that we were not indebted to Sunderland and Hillyer.

1284 901 Q. You had not the money to pay or, at least, did not offer to pay the money, and asked Sunderland and Hillyer to take your note for it, did you not?

A. I do not know now how that came about. You might have had the money.

902 Q. Don't you remember asking Sunderland and Hillyer if they would not take a note for this amount in order that you might have a receipt to show in that suit?

A. I do not know but what we did.

903 Q. Don't you know that you did?

A. No; I don't.

904 Q. It was not a matter of so great importance as to impress it upon your mind, was it?

A. No; not of great importance. The suit didn't amount to much.

905 Q. About the same time that this note was made didn't you make a contract with Sunderland and Hillyer yourself individually to look after the revision of their assessments for special improvement tax, in which they agreed to pay you ten per cent. for what you would have reduced upon those assessments?

A. Now, this thing all occurs to me. I had made a contract with Sunderland and Hillyer in July, 1878, I think it was,
1285 in which they were to pay me ten per cent., and in September, or whatever time it was that we had this settlement and gave this note, the matter of my commissions was discussed, and it was understood and agreed between Sunderland—I do not know whether Hillyer was in or not—but Sunderland, Kilbourn, and myself had an understanding that we would give this note and work it out in these commissions for the revision of assessments; that is how the note came to be given, because they recognized the fact that it would only be a question of a short time when they would be obliged to pay me money on account of my services, and took it in that way.

906 Q. The firm of Kilbourn and Olmstead never paid or credited any interest, either upon the $18,000 or this $2,715, did they, for Sunderland and Hillyer?

A. No, sir; that is why the note was drawn without interest, because it was to be wiped out. Mr. Bull held that note and an agreement made with Bull that just as fast as these revisions were brought in and charges made it was to be credited on the note.

907 Q. You say the contract with you with reference to the revision of special improvement tax was made before the note
1286 given by you and the receipt given by Sunderland and Hillyer?

A. My recollection of that contract is that it was made on the 6th of July, 1878.

908 Q. That contract was in writing, was it not?

A. I have it.

909 Q. Have you a copy of it?

A. I have the contract, and if you desire it I will furnish it.

910 Q. I simply want you to produce it for the purpose of comparing the dates of this contract and this note.

A. I do not know.

911 Q. I ask you to produce it.

A. I offered to produce it.

912 Q. What has been done by the firm of Kilbourn and Latta in reference to special taxes of Sunderland and Hillyer?

A. I do not know what had been done prior to 1877. I did not think very much about it. You mean in regard to the revision, I suppose?

913 Q. Yes.

A. I did not think very much about it. I had made the claim for damages of $20,000.

914 Q. Nothing ever came of that, except that the portion
1287 of that claim which was —. Was any portion of that ever obtained?

A. No.

915 Q. I did not know but what — referred to the claim about sidewalks.

A. Oh, no.

916 Q. Why did you not charge Sunderland and Hillyer annually with the amount that was due for the care and management of this property?

A. For the reason that we did not do a great many things. We did not spread before our clerks a good many things that were done. For instance, contributing to various societies and institutions, &c. Whenever we did anything of that kind it was entered in the expense account and no explanation made of it. We did not purpose to have our business talked about.

917 Q. Why did you not consult Sunderland and Hillyer or one of them before you made the charge?

A. We consulted with Mr. Hillyer before we concluded among ourselves what we would do. We consulted with Mr. Mattingly, who was considered quite competent to inform us upon the subject,
as to what was the charge for care and management of estates,
1288 what fees were allowed to executors and administrators, and so on?

918 Q. Did you think you stood in the shape of administrators or executors to this estate?

A. Well, we did approach near that, and pretty good executors. We did not hear from the parties often.

919 Q. You have stated in your answer in this case that after 1873 you never did have any conversation of any kind with either Sunderland or Hillyer in reference to this matter.

A. No, sir; I had none.

920 Q. You have also stated in that answer that there had never been any agreement with reference to these charges. Didn't you suppose that it would be proper to consult either Sunderland or Hillyer in reference to them before you made the charges?

A. As Mr. Hillyer had asked us in 1873 what we were going to charge for taking care of this property, and as he had been told at that time, which was after all these investigations of the ordinary charges for such services were made outside, and as we had told him or Mr. Latta had told him that we thought about one per cent. on the entire valuation of the property, and as he had said some-
1289 thing about ¾ of one per cent. being the outside or larger sum, or something of that kind, and paid no further attention to the matter, we concluded that he had the notice that a charge would be made, and we thought that if he cared anything about it or thought enough of it to make mention of it he would do so.

921 Q. Did you hear that conversation to which you refer?

A. I heard a portion of it. I heard the opening part of that conversation, which occurred in the back office, corner of G and 15th street, in which Latta said that he thought we ought to have one per cent. My impression is that I heard Mr. Hillyer's remark in regard to ¾ of one per cent., but in the lapse of time I am not able to say positively that I did. We had delegated Latta to make the arrangement with Hillyer.

922 Q. Did Mr. Latta tell you there was any agreement?

A. He did not. I never understood that any understanding was ever arrived at.

923 Q. Why, then, didn't you think it proper to consult Sunderland and Hillyer or one of them before making your charge?

1290 A. I have stated the reasons. At that time Sunderland and Hillyer were, as I supposed, quite wealthy, and it occurred to me that they didn't think much about a charge of that kind, and I do not think they ever would have if they continued along in the same way.

924 Q. Was not Mr. Hillyer in the city up to July, 1876?

A. I do not know. Not all the time I am sure.

925 Q. Why didn't you inform Sunderland and Hillyer, or one of them, immediately after this charge had been made?

A. For the same reason. We dropped the matter from that conversation, with the full feeling among ourselves that Mr. Hillyer, who was acting in the matter, treated it with a sort of indifference. We had stated our price, and he stated what he thought, on the other hand, was a large price, and then it dropped, and if anybody should object it was his business to *to* object at that time and settle it.

926 Q. You thought that a good reason for not mentioning it until a year afterwards, did you?

A. No account was ever demanded.

1291 927 Q. Do you mean to say that Sunderland and Hillyer did not demand an account in 1878, when they came here?

A. I do most emphatically.

928 Q. How came they to get it?

A. Voluntarily, and I made it when they got it.

929 Q. That was the first time it appeared to them that such a charge had been made, was it not?

A. I guess it was.

930 Q. Have you any other charge on your books for care and management of property?

A. I do not know; I think we have.

931 Q. If you have, mention it.

A. I don't know that I can mention it now.

932 Q. If you have any such you do not recall it now?

A. No.

933 Q. Do you know anybody else to whom you made charges for care and management of property?

A. I do not know anybody else in this town to whom we occupied the position that we did to the property of Sunderland and Hillyer.

1292 It was left to us to take care of, and if it had been our own property, so far as Sunderland and Hillyer were concerned, we could not have had more control of it than we did, and I don't think we ever had the approbation of anybody to greater extent than theirs until they failed in business, and I think they cannot say to the contrary. They complimented us on the management of this property at that time in this city, and expressed themselves several times perfectly satisfied with our course.

934 Q. At the conversation at the Arlington Hotel in July, 1878, of which you have spoken, between yourself, Kilbourn, and Sunderland and Hillyer, did not you and Kilbourn charge the whole responsibility for making this charge for care and management upon Mr. Latta?

A. No, sir; upon the contrary, Mr. Hillyer asked me how this thing was done and if I got my share of it, and I said I did.

935 Q. Did Kilbourn and Olmstead have this $18,000 on hand at the time of the dissolution of the firm?

A. No, sir.

936 Q. They had used it, then?

1293 A. Before the 1st May, 1877, they were ready to pay it over. We borrowed large sums of money on our own property to carry out our dissolution agreement.

At this point an adjournment was taken, with the understanding that the further taking of this testimony should be resumed tomorrow evening, February 17th, 1882, at 7 o'clock, to meet at the same place.

WM. T. S. CURTIS, *Examiner.*

Met pursuant to adjournment as above, and then adjourned, without doing anything, until March 2d, 1882, to meet at J. F. Olmstead's office at 7 o'clock p. m.

WM. T. S. CURTIS, *Examiner.*

1294 Met, pursuant to adjournment, on this the 2d day of March, 1882, at seven o'clock p. m., at the office of J. F. Olmstead.

Present: Hillyer and Ralston, for complainants; Enoch Totten, for defendant and Mr. Olmstead.

Redirect examination of Mr. J. F. OLMSTEAD by Mr. TOTTEN:

937 Q. Mr. Olmstead, when was the firm of Kilbourn and Latta organized for business?

A. Do you mean the firm of which I was a member?

938 Q. Yes, sir.

A. January 1st, 1871.

939 Q. How long had the firm of Kilbourn and Latta been running before you became a member?

A. Since December, I think it was, 1865.

941 Q. How long has it been, or rather when was the business of real estate brokerage started in this city as a separate and distinct business?

A. R. M. Hall started it in 1864.

942 Q. Was he connected with Kilbourn or Latta?

A. He was with both; Latta first, and then Latta sold out to Kilbourn. Latta was Hall's first partner and I was a clerk for
1295 them; then Latta sold out to Kilbourn and his brother-in-law.

943 Q. Was that the start of the business of real estate brokerage in Washington?

A. It was, as a distinctive business.

944 Q. You have been engaged in that business ever since, have you?

A. I have.

945 Q. What is the business of a real estate broker, as applicable to that business in the city of Washington?

A. Well, it has been and I guess it is the universal practice of all brokers to buy and sell real estate on commission or brokerage for others; also to buy and sell real estate on their own account. I think there is scarcely a broker in town who has not done that or one that has been able to do it who has not done it, that I know of.

946 Q. In reference to your own business and the business of Kilbourn and Latta before you became a member of the firm, what steps were taken, what labor was performed, in order to fit the firm in the way of gathering information to carry on that business successfully? I wish you to state that in a general way.

1296 A. We used every means in our power to acquaint ourselves with the values of real estate, the condition of real estate owners, and to that end we have advertised very extensively. We published first a monthly paper; then a weekly paper; did everything in our power in the way of building up, by the use of the press, the values of property and the desirability of Washington as the capital of the country, which has been a theme until it is almost proverbial.

947 Q. Do real estate brokers, so far as you are able to say and in reference to your firm, keep books upon which they make notes of persons who are likely to be buyers? And, if so, state the extent of that part of it in reference to the firm of Kilbourn and Latta.

A. I think that has become almost universal. We established here a board of brokers in 1868, I think it was, and through that means we established a sort of record that all brokers kept of their

customers or applicants. There were at that time but very few—five or six—in town. We, on the other hand, in our first start, to acquaint ourselves with the property in the District, bought a numerical book from the tax collector—had him make us a
1297 copy—for which we paid him, I think, $400.00, and then we took the transfers from the recorder of deeds and entered them from the plats into a separate set of books called the transfer books; but that we found very incomplete and very inaccurate, and, in 1868, I commenced to make a set of plat books. There were no plat books here in this city. You would go to the surveyor for a plat of square 66 and you would find the original plat, and he would show you nothing more; whereas there ought to be a dozen subdivisions of that plat. So I got up the set of books which I have here, making a complete survey of the city, taking the original plat and then consolidating all the subdivisions into that, so that on one page I had every subdivision made from 1798 up to 1871 of each square. I then got a numerical book myself and commenced to take the transfers from the recorder of deeds regularly. He furnished them to me every Saturday night and I entered them, and I made a ledger account with every square in the city and entered up every transfer that was made, so that when I came into the firm in
1871 I had the whole city within my knowledge. I could, by referring to my books, find every owner and know him with-
1298 out going to see about it and know every transfer that had been made. I think we had greater facilities for knowing the business of real estate in this city than all the others put together, and found it of very great value when speculation became lively here. Most of the other brokers, if they did not have a piece of property on their books, it would be necessary to go to the tax office to find out to whom it was taxed, then they had to hunt the record through to find if it had been sold, and then go and find the party who owned it—very often a non-resident. But by the use of these books all we had to do was to refer to them here and find out where the party lived, and then find out how to get hold of him.

948 Q. When a real estate owner came to your office and mentioned that he had a certain piece of property for sale and wanted you to sell it, what did you do?

A. We usually entered it on our contract book and took a contract from him to leave it with us for 30 or 60 days, or whatever time and commissions were agreed upon.

949 Q. What were the usual commissions for selling real estate in 1871, 1872, and 1873?

1299 A. It was $190.00 on the first $5,000 and 2½ per cent. on the balance. That was the rate established in 1868 by the board of brokers. That was the minimum rate.

950 Q. When property was entered upon your books as property for sale, what did you do?

A. Well, we looked over our memoranda and list of applicants to see if anybody would be likely to buy it. We discussed the matter among ourselves to see if we could think of anybody who would

like to take hold of it, and, if so, would go to see them. We advertised it both in the newspapers and in our Real Estate Bulletin.

951 Q. Who was to pay or who paid the commissions for making the sale of property entered upon your book for sale? What was the general understanding?

A. The seller always paid the commissions.

952 Q. Is that the custom of the brokers?

A. The universal custom.

953 Q. The buyer was never expected to pay commissions?

A. No, sir.

954 Q. What preliminary labor did you perform in regard to finding customers, if any? Did you keep a book upon which you made a note of people who were likely to buy real estate or
1300 who really wanted to buy real estate?

A. We kept an alphabetical index of all applicants and all wants made known to our office.

955 Q. Then it was your business to fit a piece of property to suit a purchaser?

A. It was.

956 Q. That was done for the benefit of the seller, was it?

A. It was.

957 Q. Is that the course of business up to this time?

A. That is it.

958 Q. About how many real estate brokers were there engaged in that business of real estate firms during the years 1871, 1872, and 1873 in this city?

A. I do not know; when speculation became lively they sprang up like mushrooms.

959 Q. When did real estate become lively?

A. About the fall of 1870—September, 1870.

960 Q. And continued until when?

A. Panic of 1873, or September 18, 1873.

961 Q. That panic was precipitated by the failure of Jay Cooke & Co., in 1873, was it not?

A. It was.

1301 962 Q. About when did the city begin to recover from the panic of 1873 in the matter of the real estate market?

A. Well, it commenced to recover in 1877, and in 1878 it had improved very much. During 1879 and 1880 and 1881 it has really been quite brisk.

963 Q. Where did it begin to revive first?

A. In the northwestern part of the city.

964 Q. In that portion of the city where the purchases of complainants were made?

A. Yes, sir; well, it extended down as far as 13th street, down to here, New York avenue, along this way; all of it lies north and west of here.

965 Q. Well, you name over some of the most prominent real estate speculators in 1871 and 1872, including the prominent firms of real estate brokers.

A. Well, there was Whitney & Warner, Fitch & Fox, Clagett, R. M. Hall & Co., Bolton & Moore—I don't think of any others now.

966 Q. Now give the names of the speculators.

A. They were all brokers and speculators; I don't know of a single firm that had any money at all, and they were all doing well then, that did not speculate in property; most of them speculated too much.

1302 967 Q. Do you know whether real estate brokers ever indulged in the habit or whether it was a custom amongst them of making any arrangements or agreements by which they would abstract fees from both buyer and seller in the city of Washington?

A. I never heard of a case where it was successfully done. I have heard of it being attempted.

968 Q. Ever attempted among reputable real estate brokers?

A. Not to my knowledge.

969 Q. The usual rule among real estate brokers was that they owed allegiance to the seller and not to the buyer? Am I correct about that?

A. You are.

970 Q. During the course of this examination it has been stated that Kilbourn & Latta published some kind of a paper called the Real Estate Bulletin. Won't you describe that and tell us, as nearly as you can, when you began the publication of that paper, how often it was published, what it contained, and when you ceased to publish it?

1303 A. I think it was begun in 1865 as a monthly paper, giving the condition of the real estate market, showing the transfers of real estate from one issue to another, and containing a list of property by streets or numbers of house-, squares, &c., that we had for sale. It cost us about $250 a week when we published it weekly, and we published that until some time in 1871. I have forgotten just exactly. I think it was the early part of 1871 that we gave it up.

971 Q. Was it a weekly paper all the time?

A. It was a weekly paper from 1868 or 1869. I think it was.

972 Q. Prior to that time what was it?

A. Monthly. We started it monthly and then we published it semi-monthly.

973 Q. Did you publish in that Real Estate Bulletin the property on your books for sale?

A. We did.

974 Q. All of it?

A. No; not all of it. The best and most marketable of it.

975 Q. What was the manner of circulating that paper—to whom did you send it?

A. We sent it to any person- whose name- are had on our books and who was ever in our office, by mail. Then we had it de-

1304 livered by carriers throughout the city, as other papers were, only we left a copy at each house of any account. After that or during that time, and after we stopped the publication of that

paper, we published semi-annually a report of the numbers of transfers that had been made throughout the city, the consideration, and then divided that up into the different sections of the city—for instance, the northwestern or northeastern, southwestern and southeastern, making four parts of it—and we furnished that to the city papers here, which published it with an editorial, which we usually wrote, giving a comparative statement. We also got the number of permits. We used to go around all over the city and ascertain the cost of new houses being built, and we published that, and gave the names of persons who bought property, and then always drew the comparison in favor of the northwestern part of the city. We sta-ted it in 1871, and it carried itself along pretty well, and we could nearly always show that the amount of transfers in the northwestern part of the city were very largely in excess of all the balance of the city, which had a wonderful effect in directing attention to the northwestern part of the city.

1305 976 Q. When was your attention first directed to the northwestern part of the city?

A. I think in 1867; it might have been in the winter of 1868.

977 Q. You left 7th street and moved your office to 15th street about when?

A. We came up there on the 1st of May, 1871; but in 1868 we had, or supposed we had, in contemplation a very large association, what is known now as a syndicate, to buy up property on the full line of Massachusetts avenue from, I think, 12th street to Rock creek, on both sides, as far as we chose to go. I know I spent nearly a year hunting that up while the arrangement was being, as we supposed, effected; but that was a scheme of Jay Cooke & Co., who were to furnish the money, and that was the start of our speculation or our ideas of speculation in real estate. It was a scheme, I think, of Mr. Kilbourn's. It had been his practice in the West to get persons with means to allow us the use of their money in buying real estate,

1306 and we allowed them six per cent. on their money—take out brokerage and divide profits—what we called joint-account speculation.

978 Q. Can you give a general notion of this joint-account speculation under which you entered?

A. Well, we commenced it in 1868, I think. We did not have, perhaps, but 8 or 10. It didn't amount to much. Speculation was not very rife at that time.

979 Q. Can you give a general notion of the number of persons that you had—I mean sellers of real estate—in May, 1872? I only want a general notion or guess about it.

A. I should say from 2,000 to 2,500 separate pieces of property on our books.

980 Q. Did you communicate with the owner of each of these pieces on the subject and have an understanding with them?

A. Oh, yes; all of them. Our contract used to read that the property should remain with us so many days or until withdrawn in writing.

1307 981 Q. Was your office a general point of inquiry for the benefit or in behalf of real estate speculators?

A. It was a general headquarters for real estate business for 5 or 6 years.

982 Q. When did you first become acquainted with Sunderland & Hillyer, the complainants in this case—I mean the firm, so far as you know?

A. I think we made Hillyer's acquaintance in 1871—the spring of 1871. We rented him a house on Capitol Hill belonging to Mr. Evarts.

983 Q. What relation did Sunderland & Hillyer or Hiilyer or either of them bear to the firm of Kilbourn & Latta in 1871?

A. Sunderland was not here. Hillyer had bought two or three pieces of property—three, I think—in 1871, which he sold him, or he and Senator Stewart together.

984 Q. What squares do you allude to?

A. Squares 66, 93, and 113.

985 Q. Were these sold to him in the ordinary course of business?

A. Yes, sir.

986 Q. From whom did you get your commission?

A. From the owners.

987 Q. You mean the sellers?

1308 A. The owners of the property, whose property was sold.

988 Q. Was Mr. Hillyer a frequenter of your office in those days?

A. In 1871?

989 Q. Yes, sir.

A. After we made his acquaintance and got him started to buy real estate in the northwestern part of the city he was quite frequently in our office.

990 Q. In what business was he engaged, apparently?

A. Law business.

991 Q. Where?

A. Upon some mining business before the Land Office. He had his office on F street.

992 Q. Stewart was a Senator at that time?

A. Yes, sir.

993 Q. Do you remember when you first made the acquaintance of Sunderland?

A. Well, I think it was in the early part of 1872.

994 Q. As early as January?

A. No; I think March or April, or even later than that.

995 Q. Who presented him to your office?

A. I do not remember.

1309 996 Q. The charges in this bill of complaint in the case pending in the District have been brought to your attention several times. I wish you would state in detail the relation, according to your knowledge of the matter, of Sunderland & Hillyer to the the firm of Kilbourn & Latta after the 1st of May, 1872—whether it was during the months of May or June or during the time these purchases were made, about which they have made complaint?

A. We had no relation with them whatever, further than that they were reported to be wealthy gentlemen, and we found that they were willing to buy property, and it was our object, business, and purpose to cultivate them as much as we could and induce them to buy as much as we could — our benefit, as we conceived it, and for ourselves, both as brokers and speculators, and to that end we labored pretty assiduously, just the same as other speculators, of whom there were many in the market at that time, but they were, perhaps, the largest, though. They bought more property than any other persons or association of persons.

1310 997 Q. Were the names of these gentlemen on your list of real estate speculators or buyers?

A. No, sir. Their operations then were of very short duration and very extensive.

998 Q. Did the firm of Kilbourn & Latta, of which you were then a member, ever make any contract or agreement of any kind with Sunderland and Hillyer or Sunderland, Hillyer & Stewart, or either of them, or any two of them?

A. Never did, to my knowledge, make any contract or have any talk about any contract. They could not have offered to make any contract.

999 Q. Why?

A. Because our interests were too large in other directions. We could not have offered by any manner of means to confine ourselves to their business. For instance, Sunderland first commenced to operate on his own account, outside of the association of Sunderland, Hillyer & Stewart. His account was opened on our books on a half page, as we did not suppose he would buy any more than one piece and wanted it, and would not purchase further.

1000 Q. Can you state when that was?

A. In general, I think it was in 1872. I believe it was. I have forgotten. June 26th, 1872, was the first entry in the account

1311 of Thomas Sunderland.

1001 Q. Was that before any entry was made as to Hillyer or Stewart?

A. Oh, no; Hillyer & Stewart commenced in 1871, and then Hillyer, Stewart & Sunderland commenced in May, 1872.

1002 Q. Can you give the exact date when Sunderland, Hillyer & Co. began?

A. May 18th, 1872, is the first entry of their account.

1003 Q. Did the former transaction with Hillyer & Stewart relate only to squares 66, 93, and 113, as heretofore stated?

A. That is all.

1004 Q. Then the next transaction was the 18th of May?

A. Nearly a year afterwards.

1005 Q. What did they buy on that date?

A. On the 18th of May one of them made a deposit of $5,000 on account of square 156.

1006 Q. Now Sunderland opened an account of his own?

A. Not until some time after.

1007 Q. An alleged agreement has been set out in the bill of com-

plaint in this case, and an effort has been made to substan-
1312 tial- by testimony that Sunderland, Hillyer & Co. made an agreement with the firm of Kilbourn & Latta in relation to the purchase of real estate, and it has been asserted that it was made with some members of the firm in the front office on 15th street. Could such an agreement as detailed in the testimony which you have heard and in the bill of complaint, which you have now, been made without your knowledge, or could it have been entered into without your concurrence and knowledge?

A. It could not.

1008 Q. Well, what do you say as to the existence of such an arrangement?

A. There never was sitch an arrangement; it was not in the possibilities to have made such an arrangement.

1009 Q. Did Sunderland, Hillyer & Co. keep a deposit account with the firm of Kilbourn & Latta generally or for specific purposes, as the occasion required?

A. Well, as money was required they deposited it. For instance, on square 156 I think somewhere about $25,000 was the cash payment, and the deposit was made, and $5,000 on the 18th of May; on the 24th of May another $5,000; on the 27th of May,
1313 $15,000, and that same day the square was transferred to them.

1010 Q. Square 156?

A. Yes; and that was their custom throughout the entire business. If we got hold of a piece of property that they were satisfied with, and agreed to take it, they contributed; sometimes one would put in the whole amount and sometimes another, and sometimes they would divide it up and put in proportionate parts or such parts as they agreed upon among themselves.

1011 Q. Did you ever have, personally, any conversation with either Sunderland, Hillyer, or Stewart in reference to the terms upon which you were to conduct any business which they might bring into your office or ask you to do for them?

A. Not until October, 1873.

1012 Q. Personally, then, there was no contract or agreement or any conversation about a contract or agreement of a general nature about buying real estate for them between the firm of Kilbourn & Latta and Sunderland, Hillyer & Stewart or either of them?

A. I think there was, when I come to recollect. I think
1314 there was a talk at one time with Sunderland & Hillyer about giving them the preference; if a piece of property was offered for sale, that they should have the preference as customer.

1013 Q. That you would call upon them first and offer to them before anybody else?

A. Yes, sir; I think some such talk as that.

1014 Q. What was the outcome of that?

A. Nothing.

1015 Q. You didn't agree to it?

A. No, sir.

1016 Q. Why not?

A. Because it was not to our interest to do it, or might not be. Our first interest was to buy ourselves when anything was offered, and when property begun to go up here the first thing we did was to go back over the books from the time we started in business and hunt up every piece of property, investigate, and see if parties still wanted to sell or not; if we found that they did and had not changed their prices, or were still low and had not appreciated the rise of property, we set ourselves to work pretty lively to get hold of it.

1017 Q. Did you have the funds and means at hand to carry on that kind of speculation?

1315 A. We did in every way in which we invested money; and, by the way, I was going to say, in regard *in regard* to square 115, I think a question was raised here the other day as to whether we had money on hand to buy that square.

1018 Q. You are speaking now about 115. That was the square that was purchased from the Association for the Education of Colored Youth, or something like that?

A. Yes. I have thought of that to-day, and I have looked to see what our cash balance was on that day, and I find it was $15,335.41. That was our credit balance on that day and on the 30th of May. On the 30th of April we had a cash balance of about $2,400, and on the 24th of June we had a cash balance of about $17,000; and I also have a statement which was called for in my cross-examination by Mr. Hillyer when he wanted to know whether we had funds to buy property that we did buy or used their funds. I find when we made our first purchase a statement here made by John Bull, our book-keeper.

1019 Q. He is now the trusted agent and clerk for Sunderland & Hillyer, is he not?

A. I do not know. He is doing something for them—

1316 giving them information or something. I find that after making our first purchase of real estate we had a stated balance of about $2,000; after making the second purchase we had a balance of a little over $3,000; on the third purchase, about $300 or $400; on our fourth purchase, about even; on the fifth and the sixth had a balance left of about $1,000; on the seventh we had about $2,100; on the eighth we had about $1,000; on the ninth we had about $7,000. The fifth purchase was lot 10, in square 158. This is a statement showing a credit to commission account, which was simply one account of the firm and debited that account with everything that could be charged to it, showing the only benefits, &c. After making this fifth purchase, which was this lot 10, in square 158, it stood about even. The sixth purchase was lot 17, in square 158, and the account stood in about the same condition then. The seventh purchase was that lot 9, in square 158. The 10th purchase we had a balance to our credit, which was on the 14th of January, 1872, of nearly $25,000. On the 11th purchase, which was lot 8, in square 158, we had about $20,000 balance. The

1317 twelfth is about the same. The 13th, which was one of the lots which have been sold to Sunderland & Hillyer, we had about $150.00; the 14th we had about $14,000, and on the 15th we

had about $10,000; on the 16th we had $8,000; on the 17th we made a very large purchase of somewhere about $100,000. That used up pretty much all the funds we had, lacking $600 or $700; but these are statements of twenty purchases which were charged to the account and have been introduced by the complainants here in this case and taken from this record of equity No. 5919—the case of Kilbourn & Olmstead against Latta. Mr. Bull made out this statement.

1020 Q. Well, what do you say about the correctness of this statement?

A. I think it absolutely correct; he made it out and swore to its correctness in this deposition.

1021 Q. I want your own knowledge.

A. I say it is correct.

1022 Q. When you bought square 115 you had a large sum of money to your credit. What sum had Sunderland & Hillyer had to their credit in your hands at that date?

1318 A. After making the purchase of square 115 and making the cash payment upon it they had a little over $500. They deposited the money which was required to make that purchase on the 28th of May, and the purchase closed on the 30th, and on that same day we had a cash balance of our own of $15,000, as I read it here.

1023 Q. What book is that you have before you now?

A. The ledger.

1024 Q. What ledger?

A. Kilbourn & Latta ledger.

1025 Q. What account?

A. Sunderland, Hillyer & Company's account.

1026 Q. The same ledger that you have been using in the examinations heretofore in this case?

A. It is the only ledger we have.

At this point the further taking of this testimony was adjourned until to-morrow evening, the 4th day of March, 1882, to meet at same place and hour.

WM. T. S. CURTIS, *Examiner.*

1319 Met, pursuant to adjournment, on this 4th day of March, A. D. 1882.

Present: Mr. Hillyer, for complainants; Mr. Wilson, for defendant; Mr. Totten, for Mr. Olmstead.

Redirect examination of Mr. OLMSTEAD (continued):

By Mr. TOTTEN:

1027 Q. It has been asserted, Mr. Olmstead, that there were relations existing between the firm of Kilbourn & Latta and these complainants, or these complainants and Stewart, for a confidential relation which involves the doctrine of agent and principal. I want to know of you if there were any confidential relations between those

parties and the firm; and, if so, I want you to state the nature thereof during the period involving this question of dispute?

A. I never heard of any confidential relations between the firm and Sunderland and Hillyer any further than the relations with any other customer of Kilbourn & Latta. We transacted their business and kept their business to ourselves. The only confidence was that we did not tell the public any more about it than I have declined to do in this case. I have declined to produce here many
1320 papers called for, because I considered them confidential in connection with others. We had no more confidential relations with them than with any other customers, as I have stated a great many times.

1028 Q. You stated on the last occasion when we met here for the purpose of taking testimony that you had what you denominated a transfer book. Did you have any other book relating to your general business of real estate dealers in addition to that transfer book?

A. I had a numerical book, which gave the names of all property-owners in the city. Then I had a set of books containing accounts with each square in the city, which showed all transfers from the date of the numerical book, which was in 1871, up to that time.

1029 Q. At what date did you start out with these books, or at what date were in your possession ready for use in the management of your business?

A. In 1870; I commenced them in 1865 and finished them in 1870.

1030 Q. You spoke the other evening about the transaction with Hillyer in 1871 relating to squares 66, 93, and 113. What
1321 became finally of square 113, so far as you know?

A. It was sold to Senator Stewart.

1031 Q. By whom?

A. By Sunderland, Hillyer & Co. or Sunderland and Hillyer. I don't know exactly how they did that. They made a settlement with Stewart. Sunderland bought Stewart's quarter interest, and then they sold square 113 to Stewart for 60c. a foot.

1032 Q. What did they pay for square 113?

A. I do not remember. Let me see (the witness here referring to some books and papers); paid 40c.

1033 Q. Paid 40c. and sold it for 60c.

A. Paid 40c. for it in May, 1872, and sold it to Stewart, March, 1873, for 60c.

Mr. HILLYER: Bought it in what year?

A. In May, 1872.

Mr. TOTTEN:

1034 Q. There is a subject-matter of complaint here that the deeds were not put on record until some time in October or fall of 1872. I want you to state, if you can, whether or not Sunderland and Hillyer knew anything about the object and purpose of retaining those deeds without putting them on record; and, if they did know about it, how they knew and how they found it out.

1322 A. There was an understanding between the firm and Sunderland and Hillyer that the deeds were not to be put on record, for the reason that if these deeds were put on record until they got what they wanted it would tend to inflate the market, and that they did not desire to do.

1035 Q. Had that been the practice in your office prior to that time?

A. That was the practice with what was known as the Real Estate Association. No deeds for purchases were recorded to the Real Estate Association until October, 1872, I think it was.

1036 Q. What did they say about that matter when the same was mentioned to them?

A. I don't remember what they said. I know it was done entirely with their knowledge and approval.

1037 Q. Where were these deeds keept in the office?

A. They were kept in appropriate envelopes like these (holding up a bundle of large, heavy, paper-board envelopes) and in a box labeled with their names—Sunderland & Hillyer, Sunderland, C. J. Hillyer.

1038 Q. Were those papers in those boxes so labeled subject to the inspection of Sunderland and Hillyer?

1323 A. They were. They could call for them at any time. They did call for certain papers many times.

1039 Q. Did they see them?

A. They did. I do not mean by that that they saw every paper; but they were there subject to their call at any time. It would have been foolishness to have attempted to conceal them, or anything of that kind.

1040 Q. Who finally put the deeds upon record?

A. I don't remember whether I did or Mr. Bull did—one or the other of us. I presume I did.

1041 Q. Mr. Sunderland in his deposition swears that they employed the firm of Kilbourn & Latta to purchase such real estate as they, the complainants, might point out or that they might designate or recommend. Was there any such general employment as that? You have already stated, of course, that there was no such employment. Now, he states positively that they did employ the firm to do these things. I want you to state whether that is true or not.

A. It is not true. There was no employment at all, and I do not know of their ever designating a single piece of property, with

1324 three exceptions, that they wantid.

1042 Q. Well, will you state what three exceptions they were?

A. Square 195, and the other was parts of square 92, and I am very indistinct about their having designated 92. I do not know. I cannot swear that they ever called our attention to a piece of property except square 195.

1043 Q. Mr. Hillyer swears that the firm was employed by them as brokers and as their agents, and that you were to purchase such property as should be considered desirable, and that the complain-

ants agreed to furnish you with money, &c.; and he states distinctly that you were to act in these matters strictly as the agents of the complainants or the complainants and Stewart. Now, what I want you to state for the information of the court is whether there was anything said about your being employed or hired or engaged in any way to serve these men either as agents or as brokers, generally or specially.

A. There never was any agreement of that kind at all; never was any talk, that ever I heard, about their furnishing money
1325 to do this or that. When they made up their minds to buy a piece of property or agreed upon the price they found out how much cash was required and furnished the money the same as any other customer did.

1044 Q. Was there any such arrangement or anything that indicated an arrangement that you were bound to serve the complainants and Stewart or either of them in any transaction?

A. In no sense whatever.

1045 Q. Was there any arrangement by which they were bound, either legally or in honor, to employ the firm of Kilbourn & Latta to do their business in respect to any special property?

A. There was not. As far as we knew, the first piece of property purchased might have been their last transaction, and they might at any day take charge of their property themselves. It was understood when the purchases were made, and as they were made and the property placed in the hands of Latta, that at any time they chose they would take the titles to themselves, and at that
1326 time they were contemplating going abroad and did have some talk in regard to taking their titles to themselves and not selling their property, but waiting until they came back to give it a chance to rise. In each deed under which Mr. Latta held title there was a clause stating that it is held under a certain printed paper, and, because they had some idea of taking their titles to themselves, that was one reason why those printed papers were never executed—those declarations of trust provided for in the deeds.

1046 Q. Was there anything said between the parties which would preclude Sunderland & Hillyer or Sunderland, Hillyer & Co. from going to any real estate man, broker, or agent, if they saw proper so to do?

A. There was none whatever.

1047 Q. Now, I want you to state as distinctly as you can in what attitude these men presented themselves to the firm of Kilbourn & Latta; whether they presented themselves to you as men who intended to rely upon your judgment in any transaction, or whether they presented themselves to you to get the advantage of your office in ascertaining what pieces of property were for sale, in order that
1327 they might see — property and exercise their own judgment about it.

A. They came to us the same as other customers did and in no other attitude that I ever knew of. I think they found it advantageous to them to come to us, and think they recognized what was

a well-known fact—that we had practical control of that portion of the city. I do not mean absolute control, but that we knew all about it and were more advantageous than anybody else could be.

1048 Q. Did they pretend or seem to rely upon your opinion about the property, or did they seem to rely upon their own opinion?

A. I think they ordinarily asked us whether we thought that a good purchase, or this a good one, or *or* this or so, as anybody else did.

1049 Q. As a matter of fact, then, Mr. Olmstead, did these men, after they inspected and bought property, rely on your judgment or their own.

A. They relied on their own. In other words, they decided for themselves. We showed them a piece of property and told them the price was so and so, and they decided themselves whether they would take it or not. For instance, they bought square 156
1328 in May, 1872, and paid 12½c. a foot for it, and in June, seventeen days later, they bought square 155 and paid 26c. a foot for it, and in the meantime bought part of square 134, for which they paid 26c. a foot.

1050 Q. At the time Sunderland and Hillyer were investing their money throughout the city were there many other people coming to your office in the same way as Sunderland and Hillyer for the purpose of purchasing real estate?

A. Oh, yes.

1051 Q. How many—one, two, or a dozen?

A. I should say a hundred.

1052 Q. Your office was a general rendezvous for purchasers as well as sellers of real estate in this part of the city where these transactions took place?

A. It was headquarters for business. Nearly all the brokers in town came to us. If they had a piece of property they came to us to sell it for them—at least, very many of them did.

1053 Q. It is one of the principal sources of grief to the complainants in this case that you were to procure sellers or owners of
1329 real estate to sell property to Sunderland & Hillyer or those men and to get commissions out of the sellers if you could, and if you could not then they would pay commissions. That, you have said, was not true. Now, was there any case where you sold property to Sunderland & Hillyer for the owners where they had reason to suppose that you were acting as the agents of Sunderland, Hillyer, and Stewart, that you know of? Take Mr. Young, for instance. What did he, or rather in what light did you regard him, so far as you know—as his agent or as your agent?

A. When we sold property for Mr. Young we sold it as his agent.

1054 Q. Did you charge him commission?

A. Yes, sir. When we sold it to Sunderland & Hillyer we sold it as agents, &c., of the Real Estate Association.

1055 Q. Then you sold the property for Young and the Real Estate Association to these men?

A. Yes, sir.

1056 Q. What did Sunderland, Hillyer, and Stewart, or either of them, know about the Real Estate Association? Did they know that such a Real Estate Association existed?

A. They did.

1057 Q. How do you know that fact?

A. It was communicated to them.

1330 1058 Q. By whom?

A. They knew all about the generality of it. That was one of the incentives to them to buy in the northwestern part of the city, because the Real Estate Association was buying right largely up there and they wanted to get in.

1059 Q. When was this Real Estate Association or speculation first started—about what date?

A. I think it was originally started in the early part of 1871.

1060 Q. Had been running on, then, for more than a year when Sunderland & Hillyer came into these transactions mentioned in this bill?

A. Yes, sir; we sold square 156 for Thomas Young in October, 1871, and we did not sell it to Sunderland & Hillyer until May 17, 1872 (looking over his books). I think we commenced making purchases for the Real Estate Association June, 1871.

1061 Q. Did you make that last answer after referring to your books to refresh your memory?

A. I did.

1062 Q. These conveyances which were made to Sunder-
1331 land, Hillyer & Co. were made to James M. Latta, trustee, as a general rule, or was it universally so?

A. I think, with one or two exceptions, universal.

1063 Q. Now, will you please state how it came about that these conveyances were made to Latta, as trustee, for their benefit? Whose suggestion was it, or was it suggested to Sunderland and Hillyer? If so, what did they say about it?

A. I do not just know how it came about. We told them how titles were held to property belonging to the Real Estate Association, and whether we advised them that was a good way to do with their property or whether they concluded to do it themselves, I do not remember.

1064 Q. It was done, however, with their knowledge and consent?

A. Oh, yes.

1065 Q. Did they ever say anything to you about their desire, if they had any, of having these deeds recorded at once?

A. Never did. On the contrary, they preferred to have done with them just what was done.

1066 Q. They were aware at the time that these deeds were not being put on record at that time?

A. They were fully aware.

1332 1067 Q. And aware that the conveyances were made to Latta in every instance where conveyances were made to him?

A. Yes, sir. I think the fact of their being made to Latta instead of the other members of the firm was a matter of understanding be-

tween the other members of the firm. I do not think that Sunderland & Hillyer had any preferences as to who should take their titles.

1068 Q. There was never anything in writing, signed by anybody or otherwise, as to the relations between the firm — Kilbourn & Latta and Stewart, Sunderland, and Hillyer, was there?

A. There was not.

1069 Q. Was there ever any specification or notion as to the time during which these speculations of Sunderland, Hillyer, and Stewart, or either of them should cease or continue?

A. There was not. Each transaction was separate and distinct by itself, and, for aught we knew, was to be the last one.

1070 Q. As a real estate man, what is your judgment about such a contract as these complainants allege was made between you in relation to extorting—in relation to the firm acting as the
1333 general and special agents of Hillyer & Sunderland and at the same time as the agent of the seller whose property you had upon your books, and to extorting commissions from the seller in every instance you could; failing, however, to extort commissions from him, that they would respond for your services? I want to know your opinion about such transactions as that, as a real estate man?

A. I think if such a contract or transaction was ever made and known by anybody but the parties making it it would end the business of the firm who entered into it.

1071 Q. You think such a transaction would be a fraud on owner of the property, don't you?

A. Yes; it would be a fraud. I do not think that people would place their property in our hands or have much control of their property if it was known or even supposed that we were dealing in the interest of parties antagonistic to them.

1072 Q. Well, so far as the firm of Kilbourn & Latta were concerned, there was no such agreement?

A. Never was any such thing; never thought of while I was a member of that firm.

1334 1073 Q. Will you state how it happened that Hillyer and Sunderland had their attention invited to the northwestern part of the city as a proper and profitable field of speculation, and who did it?

A. Well, I think, I did it.

1074 Q. Will you state when and where? State all the circumstances.

A. Colonel Hillyer rented a house, through us, of Mr. Evarts, upon Capitol Hill. At one time I was up there attending to some repairs or to collect the rent, and he called my attention to square 727, which lay just north and a little east of that house—right over on the hill. It was a very pretty piece of property, and he talked as though he might like to buy it or a portion of it. I immediately called his attention to the northwestern portion of the city, and, I think, it was through that conversation that he decided not to buy that property up there.

1075 Q. Sunderland and Hillyer and Stewart, too, for that matter,

are men of at least ordinary intelligence and business capacity, are they not?

A. I think, as I said before, I considered them pretty shrewd operators.

1335 1076 Q. Did they pretend, or either of them, that they had any experience in real estate operations to you at the time?

A. I don't think Stewart or Hillyer ever said anything about it, and I do not know if, in the early part of their speculations, Sunderland ever had; but afterwards I understood from him or one of them that he had been a speculator in real estate in California or Indiana.

1077 Q. Those gentlemen in their ordinary conversation pretended to be able to take care of their own business, did they not?

A. They seem- to me to be abundantly able to do it.

1078 Q. They pretended to be able to do it, and they asserted it?

A. Yes, sir.

1079 Q. All of them are lawyers of more or less professional fame, are they not?

A. I so consider them; I suppose they are.

1080 Q. Stewart was a United States Senator for two terms, and Sunderland had had some experience in buying and selling real estate, so he himself stated. Is that so?

A. Yes, sir.

1081 Q. Has he stated as much to you?

A. He has.

1336 1082 Q. If the real estate and financial market had gone on as it existed in 1872 there would never have — any trouble of the kind we are now having in this suit, would there?

A. I don't think there would.

1083 Q. These gentlemen are not as wealthy as they were in May, 1872, are they?

A. Well, I am of the opinion that they are not. Every evidence indicates that they are not.

1084 Q. Do you know anything about the settlement by which Stewart went out of this speculation?

A. I know nothing about it except what the books show.

1085 Q. What do they show?

A. Well, he was paid for his interest by Mr. Sunderland and refunded his money, the amount of his investment.

1086 Q. Were you present during the settlement or told of the settlement by either of the present complainants?

A. Not as to how it was settled or how they arrived at their settlement. That, I think, they did by themselves.

1087 Q. They simply paid Stewart so much, turned over square 113, and let him out?

1337 A. No; I think they sold 113 afterwards.

1088 Q. Then they paid him so much money and let him go?

A. Sunderland bought his interest outright?

1089 Q. Sunderland did?

A. Yes.

1090 Q. Leaving Sunderland owning three-fourths and Hillyer one-fourth?

A. Yes.

1091 Q. How can you fix the date when Mr. Stewart retired from this speculative enterprise?

A. I can.

1092 Q. I want the exact date.

A. (The witness had been looking over his books:) I don't see any entry on our books here. I think it is in that exhibit of account of Sunderland, Hillyer & Co. It is on the foot of that account. I don't see it entered on these books and I don't think it was. I cannot give the exact date at present.

1093 Q. Who was it bought, in the first instance, this real estate which is the subject-matter of this controversy in this bill of complaint in these proceedings?

A. What do you mean?

1094 Q. Was it the statement of Sunderland & Hillyer or Sunderland, Hillyer, and Stewart?

A. Sunderland, Hillyer & Stewart.

1338 1095 Q. All three purchased originally?

A. Yes, sir.

1096 Q. Then it belonged to Sunderland, Hillyer & Stewart?

A. Until they sold out, whatever that date may have been.

1097 Q. When he sold out he sold his interest to them in that real estate?

A. He did.

1098 Q. Now, Mr. Olmstead, will you bring your mind back to the purchase of square 115 from the Association for the Education of Colored Youth, and state whether you were active in interviewing Mr. Baker and Mr. Bowen or others of the board, and whether you ever met those gentlemen on 12th street, at the house of Mr. Johnson?

A. I don't think I ever talked a great deal with Mr. Bowen about it, because I knew from way back in 1866 or 1867 that it was better to let the other trustees talk to him than for me to do —. Mr. Latta spoke to him several times in regard to it, and I spoke to him several times when I met him casually. I met the trustees, I believe, nearly all of them, at Mr. Johnson's during the time we were negotiating for that property, which ran along three or four years,

1339 and in the winter or spring of 1872 I was there quite often when they would not have a quorum, and several times when there was a full board meeting.

1099 Q. Well, it appears from the testimony of Mr. Baker that you made an offer of $40,000 to the association in January, 1872, for this property, and that it was by a resolution accepted some time about the first of February, 1872. The sale was not finally consummated until May, 1872. Will you explain the cause of delay between the first of February and the time when the conveyances were finally made?

A. One cause of delay was some imperfection in their charter.

1100 Q. That, I think, you have already explained.

A. Then the deeds were made out two or three times and went to New York to be executed and came back. I don't say two or three times, but once or twice. They were not properly executed and had to be corrected.

1101 Q. Well, that property was conveyed by the association to Latta as trustee?

A. It was.

1102 Q. Latta acted in the capacity as trustee for whom?

1340 A. The firm of Kilbourn & Latta. It was bought in the interest of Kilbourn & Latta.

1103 Q. Have you kept track of square 115 since that time?

A. I have to some extent.

1104 Q. Between what streets is square 115; by what streets is it bounded?

A. Nineteenth and Twentieth, M and New Hampshire avenue.

1105 Q. It is a triangular piece of property, is it not?

A. Well, one end of it is triangular and the other square.

1106 Q. One end is narrower than the other?

A. Yes.

1107 Q. Have you stated in your testimony how much that property is now worth?

A. I stated what it has been sold for.

1108 Q. What, in your judgment, is it worth to-day?

A. I think it would sell in a body for a dollar a foot.

1109 Q. They paid how much for it?

A. Forty-six cents. We sold the same day that we sold the square to them a portion of the square right north of it to Dr. Stearns for 45 cts.; he held that until the following January and then sold it for a dollar, and the upper portion of that square is just as valuable as that sold by the Doctor.

1110 Q. What became of square 115; who owns it now?

1341 A. Owned by various individuals. It is cut into little lots and alleys and was sold out at auction. It has been largely built upon, more so than any other square in the city, I think.

The further taking of this testimony was adjourned until Monday, March 6th, 1882, at 7.30 p. m., at the same place.

WM. T. S. CURTIS, *Examiner.*

Met, pursuant to adjournment, on this the 6th day of March, 1882, at the usual hour and place.

Present: Messrs. Hillyer & Ralston, for complainants; Mr. Totten, for Mr. Olmstead; Mr. Wilson, for defendant.

Redirect examination of Mr. OLMSTEAD (continued):

By Mr. TOTTEN: Mr. Olmstead, it has been stated repeatedly that the firm of Kilbourn & Latta took pains to impress upon the minds of Sunderland and Hillyer, and perhaps Stewart, that they, the firm of Kilbourn & Latta, should not in any event undertake to

1342 communicate with the sellers of property because such proceedings might inflame the minds of the sellers and induce them to raise the price of their property. I want to know, as a mat-

ter of fact, whether the firm of Kilbourn & Latta or any member of it did take pains to create such an impression upon the minds of Sunderland, Hillyer, or Stewart, so far as you know?

A. I never knew of anything of the kind. I do not think Sunderland, Hillyer, or Stewart ever inquired who were the owners of the property or ever cared to see them, and it certainly was not our business to bring them together unless necessary. It was not the policy of the firm to bring their customers together. I never heard the idea advanced or question raised. I don't think they cared who the owners were if they got the property at the price they were willing to give for it.

1111 Q. When Sunderland, Hillyer and Stewart first appeared in the market, say in May, 1872, what was the condition and the weight of the firm of Kilbourn & Latta as real estate men, brokers, speculators, or agents?

A. Well, I think we stood at the head and had nearly or
1343 practically control of the real estate market—more so than all the rest put together.

1112 Q. Taking into consideration the office fixtures, your transfer books and other records which you had made, giving you a command of the real estate market, including the number of purchasers and property for sale and your facilities for conducting business and your good will, what was the whole outfit, at a fair valuation, worth? I now ask you that question for the purpose of getting your opinion as to how much value these men would have commanded and controlled if they had had the control of the firm which they aver they had. What was the whole thing worth as a means of making money?

A. I don't think we would have sold it for a $100,000.00. I got my interest in the firm for my books. They were considered equivalent to a quarter of the firm at the time I was in—in 1872.

1113 Q. How old a man was Latta in 1872?

A. Don't you know? I don't exactly know.

1114 Q. Were Kilbourn, Latta, and Olmstead old or feeble men who were not able to give active attention to their business at that time?

A. They were quite vigorous.

1115 Q. Kilbourn is not more now than fifty-two, is he?
1344 A. He is not fifty.

1116 Q. Is Latta as old as Kilbourn?

A. Three or four years older.

1117 Q. How old is Olmstead?

A. Getting on the other side of forty.

1118 Q. He is not forty-two?

A. Not yet.

1119 Q. These men were at least ordinarily active in the transaction of their business in 1872, were they not?

A. I think they were.

1120 Q. And they were more than ordinarily successful?

A. I don't know about that. They had been so long in business and worked so hard to get it up to what it was that the business

was practically in our hands. It was just a question of manipulation. I want to add further to that question, in regard to the business of that firm, that our account—our commission account—before these gentlemen commenced their speculations was, for the year 1871, nearly twenty-five thousand dollars. We divided in that year on this one commission account, outside of our speculative account, twenty-five thousand dollars.

1345 1121 Q. If this contract had been made by the firm of Kilbourn and Latta with Sunderland, Hillyer & Co. on the terms they state, how much would it have been worth to you and to them? What would have been a fair valuation, I mean, if a contract by which you were to stand by a fraudulent agreement to act as agents of both parties and secretly with Sunderland and Hillyer for the purpose of defrauding sellers of real estate in getting commissions from them, if you could, had been entered into—what would have been the value of the wielding of such power by the firm of Kilbourn and Latta if such contract with Sunderland and Hillyer had been made?

A. That depends upon whether they intended to remain in business after they got through with that contract, which I do not think they would.

1122 Q. Who?

A. Kilbourn and Latta.

1123 Q. You think such a contract would have turned them out of the real estate market?

A. Pretty rapidly.

1124 Q. Well, to command the knowledge and skill of this firm, how much would it have been worth to Sunderland, Hillyer and Company for an indefinite period, as they stated here?

1346 A. Why, absolute commissions based on their purchases amounted to, if their statement is correct, from twenty to twenty-five thousand dollars.

1125 Q. During the time these purchases were being made by Sunderland, Hillyer and Stewart?

A. All time. That would be the end of the firm.

1126 Q. Well, what would have been the amount according to the amount of property purchased by or through you?

A. I think the property purchased by them would amount to upwards of, say, five or six hundred thousand dollars; I do not remember positively.

1127 Q. The rate of commission was what?

A. It was graduated; five per cent. on the first two thousand dollars, three per cent. on the next three thousand dollars, and two and a half per cent. on the balance.

1128 Q. Can you state numerically how many purchases they made?

A. No; I cannot.

1129 Q. Somewhere about a dozen or fourteen, was it not?

A. I should say thirty, although it might not have been that many.

1130 Q. Then there would have been thirty instances of
1347 graduated commissions according to that scale?

A. Yes, sir.

1131 Q. I think you have stated, Mr. Olmstead, pretty much all there is about the basis for your charge for care and management of the property of the complainants?

A. I want to add one thing more to that. We got up a lithographed map of the northwestern portion of the city, commencing at Fourteenth street and running to Twelfth street and west and north. We had it colored—that is, the properties belonging to Sunderland and Hillyer, that belonging to the Real Estate Association, and that we owned, as well as others. I think we got up 2,000 or 2,500 of them. They cost us 10c. a copy, and the whole property had for-sale signs on it. Those for-sale boards cost us about 45c. apiece, and they only last about thirty days, being stolen and knocked down, and had to be replaced constantly.

1132 Q. About how many of those signs did you order, giving a rough estimate?

A. Ordinarily about 200 at the time. We got them about every three months.

1133 Q. Can you state the date when you furnished to Sunderland and Hillyer the last account which you stated to them?

1348 A. No; I cannot. It was when Kilbourn and I knew of their coming, I think it was in the early part of June, 1878, that we furnished the account current of Sunderland, Hillyer & Co., and Thomas Sunderland, with the old firm of Kilbourn & Latta and also with the new firm of Kilbourn & Olmstead, was furnished them within two or three days after they got here.

1134 Q. That, you think, was in June, 1878?

A. Mr. Hillyer will furnish you with the date. We had not been here more than two or three days when it was furnished. I cannot give the date, as I have no data by which I can give it.

1135 Q. Well, will the accounts themselves show or did they show?

A. I do not know. I know I had them all prepared as soon as I knew they were coming here, so as to deliver them to them.

1136 Q. The last account furnished to them of the matters and things relating to the business of Sunderland, Hillyer & Co. showed a balance due to them of about 2,700 and odd dollars, did it not?

A. It did.

1137 Q. Was that ever paid?

A. It was.

1349 1138 Q. Can you state when it was paid and whether you took a receipt?

A. I think it was paid on the 6th, 9th, or 10th of September.

1139 Q. Have you the receipt, or a copy of it?

A. I have or you have; I do not know which.

Mr. TOTTEN: I offer in testimony, in connection with this, the copy of a receipt dated September 10, 1878, signed by Sunderland and Hillyer and Thomas Sunderland for $2,715.58.

The receipt last before referred to by Mr. Totten is made a part of this testimony, attached hereto, and marked "Exhibit S. & H. No. 1."

1140 Q. Do you know that to be a correct copy of the original?

A. It is.

1141 Q. Where is the original?

A. It is in the case of Kilbourn and Olmstead against Latta.

1142 Q. In the record in that case in the supreme court of the District of Columbia?

A. Yes, sir.

1143 Q. To whom did you pay that money or with whom did you make that settlement?

1350 A. I think I made that with Sunderland.

1144 Q. Well, that was two or three months after the accounts had been rendered showing this balance?

A. I guess about three months.

1145 Q. Was there any conversation between you and Mr. Sunderland at that time as to the correctness and operation of that receipt?

A. There was, as I have given in my cross-examination.

1146 Q. Was there anything said at that time about the pendency of a separate suit pending in Indiana against Latta?

A. No; I do not think there was any. No; I know there was no talk about a suit in Indiana then.

1147 Q. Was there an understanding as to whether or not it was a receipt of the final settlement between the firm of Kilbourn and Latta, so far as these defendants were concerned, and Sunderland, Hillyer & Co.?

A. It was a final receipt, as far as everything was concerned, except charges for care and management of property, and it was a final receipt, so far as Kilbourn and Olmstead was concerned, in regard to that.

1148 Q. Then that was the final receipt, and so understood

1351 between the parties, as to all matters and things touching the business of Sunderland, Hillyer & Company with the present defendants Kilbourn and Olmstead?

A. It was.

1149 Q. No doubt about that, is there?

A. There is not a particle of doubt about it.

1150 Q. When did you first hear of a disposition on the part of complainants in this case to repudiate that settlement as to its finality?

A. I think it was in 1880.

1151 Q. Do you remember about the month?

A. Well, it was shortly after Mr. Hillyer came here, which I think was in July.

1152 Q. He came here in June, didn't he?

A. July, I think, although I am not positive about that. It might have been June.

1153 Q. In answer to the 32d direct question put to Mr. Sunderland he says: "My recollection is that they" (that is, Kilbourn

& Latta) "stated that very often when they got the seller down to what he said was the lowest price that he would take for a particular piece of property they could then get commissions out of that price." What do you say about the firm of Kilbourn & Latta having said any such thing as that?

1152 A. Well, I did not say anything of that kind, that I know of, and I don't think any of the other members of the firm was foolish enough to say it, and I think they were smarter than I was.

1154 Q. It was stated in one of the depositions that the firm or some member of it stated that you held sellers at arms-length. Did you ever say anything like that?

A. I do not know what that means.

1155 Q. Well, did you ever say any such thing?

A. I could not have said anything of the kind. I am sure I have no conception of the meaning of it.

Recross-examination:

By Mr. HILLYER: What was John Bull's salary as book-keeper of the firm of Kilbourn & Latta?

A. Eighteen hundred dollars.

1156 Q. Per year?

A. Yes, sir.

1157 Q. That covered all his work, did it?

A. It did.

1158 Q. In the extract which was read from your deposition commenting upon a statement made in reference to this note of $2,715.58 the extract says "he" stated so and so. Who did you mean by "he?" I mean from your rebuttal testimony.

1353 A. I do not understand what you refer to.

1159 Q. It is question 57, on page 149, in the testimony of the case, No. 5919, pending in the supreme court of the District of Columbia. The question commences: "He makes some statements in regard to a proposition that if he would pay the amount you said was due to Sunderland and Hillyer, being $2,715.58," &c. I want to know who you meant by he.

A. Latta.

1160 Q. In answer to one of the questions in your examination, speaking of Sunderland and Hillyer and some things regarding their relations with you, you said "until they failed in business." What did you mean by that?

A. Well, I meant until they notified us that their circumstances had changed; that they had met with reverses in California and Pacific slope operations, and they could no longer furnish money to carry on this property; that we must take care of the property, and in its condition ought to be able to handle itself; that we ought to be able to get money enough on it to pay off its liabilities,

1354 fund its debt, and we made various efforts to do that. I do not think there was any doubt about the fact that the condition of both Sunderland and Hillyer or all parties, Sunderland, Hillyer and Stewart, had changed very greatly from 1874 or 1875

to 1875 and 1876. That was the time of the crash in California and Pacific stocks, and then they lost very heavily, as I understood, and were no longer able to pay on account of this property.

1161 Q. When do you say they were not able to pay? Fix the date.

A. Well, I think it was in 1876. It might have been in the early part of the winter of 1875 or 1876; somewhere along there.

1162 Q. What debt couldn't they pay, or what debt did not they pay?

A. They could not respond to our letters and telegrams for money, and you yourself, I think, said you was not going to pay any more money on that property; that it had to take care of itself.

1163 Q. Do you know anybody that Sunderland and Hillyer did not pay at any time?

A. I know that they did not pay $52,000 that was due to the Bancroft estate and never paid it. I know that they could not or did not pay the interest on the loan that was made by Gen-
1355 eral Jeffries on square 156. It was a year and a half overdue and he sold the incumbrance he held at some sacrifice to get out of it or rid of it. That loan was made in 1876, and I don't think they paid any interest on it until it was bought by John B. Alley.

1164 Q. Do you know anything about that or are you guessing at it?

A. I happen to know something about it.

1165 Q. You say the interest was not paid on Jeffries' note?

A. I do say it was not paid for a year and a half. I have in my safe an order from Gen. Jeffries to sell that property in default of interest and tax, both of which were provided for under that trust.

1166 Q. Did you have money of Sunderland and Hillyer in your hands at that time?

A. No, sir.

1167 Q. What time was it, then?

A. Well, I should say it was in 1878.

1168 Q. Did not you have $2,715.58 in 1878, at this time?

A. No, sir.

1169 Q. Was it after September, 1878, that you say this happened?

A. Yes, sir.

1170 Q. After September, 1878?

1356 A. After September, 1878.

1171 Q. Do you know of any failure of them to pay any debts before that time? If so, state when.

A. Well, we took up a loan we carried on square 56.

1172 Q. Who carried?

A. We carried.

1173 Q. Did you have anything to do with carrying these debts?

A. Enough to get it postponed and carry it along; that was all.

1174 Q. Up to September, 1878, you owed Sunderland and Hillyer $2,715.58, did not you?

A. We owed Sunderland and Hillyer in 1877—January—$2,715.58.

1175 Q. And on the 1st day of January, 1878, you owed them, according to your own account, $18,000?

A. January, 1877. We paid that all out before the 1st of May.

1176 Q. Your own account shows when you paid it out. Is that correct?

A. I have it here (referring to books and papers). All paid out but $5,000, and that we did not pay out on account of getting in a difficulty with Latta, and partially because you did not decide what was to be done and who should manage it.

1177 Q. Do you know of any failure of Sunderland and
1357 Hillyer to pay any debt before September, 1878, that they owed?

A. I do not know that I do.

1178 Q. Did not you send Gen. Jeffries to Sunderland and Hillyer, in the month of June or July, 1878, and ask him to get Sunderland and Hillyer to give you the receipt for $2,715.58, because you and Kilbourn did not have money to pay, and because you needed to use it in the suit between Kilbourn and Olmstead and Latta?

A. No, sir.

1179 Q. You did not?

A. No, sir.

1180 Q. What was the reason for your wanting to get that receipt and give it instead of money?

A. I have explained that. At that time we had the matter of the taxes, and it was conceded by Sunderland and Hillyer that commissions on taxes would amount to more than that note probably, and instead of paying money we were to work out that balance.

1181 Q. Who was to work it out?

A. Kilbourn and Olmstead.

1182 Q. Did Kilbourn have anything to do with that?

1358 A. Yes, sir; it was a partnership transaction. The contract was made with me because we could not transact business with the Board of Public Works as a firm.

1183 Q. Didn't you get that contract by representing that you had peculiar knowledge and peculiar means for obtaining the revision of these taxes?

A. Not by a damn sight. You came to the office and asked me to do it; I did not seek it at all.

1184 Q. Didn't you say at the time when you were employed to get a revision of those taxes that in that way you would be able to pay this note?

A. The note had not been given then.

1185 Q. Well, to pay this indebtedness of $2,715.58?

A. I don't think I said anything about it. You came to the office and asked me what I would charge to take charge of the matter of revision of assessments, and said you considered I knew more about the business than anybody else, and to that extent you wanted to employ me. I told you I would charge ten per cent. on all reductions on the property and everything else, and you agreed to it, and that contract was made in accordance with that. I do not

1359 think I said anything about a note or indebtedness or anything else.

1186 Q. Did you owe this indebtedness at that time?

A. We did.

1187 Q. Did you say Sunderland and Hillyer failed in business at that time?

A. They were pretty hard up.

1188 Q. Why did not you pay them what you owed them?

A. They didn't seem to want it; they then owed me some considerable amount on revisions that were then in process of adjustment.

1189 Q. What member or members of the Real Estate Association did you consult with before you made the sale *of* Sunderland and Hillyer of square 156?

A. I do not think we consulted with anybody; we might have.

1190 Q. Did you at any time subsequent to that sale, and within the year of 1872, consult with any member of the Real Estate Association in reference to that sale or give them any information in regard to it; and, if so, with whom?

A. I do not remember whether we did or not; I do not
1360 think that has anything to do with this case, one way or the other, whether we did or not.

1191 Q. Do you know whether you did or not?

A. I do not, I am sure.

1192 Q. What do you think about it?

A. I do not know anything about it now.

Mr. Wilson: I object to what he thinks about it.

Mr. Hillyer: When you obtained money from Sunderland and Hillyer did it go into your general bank account in 1872?

A. It did.

1193 Q. Did you have money of the Real Estate Association in your general bank account in 1872?

A. We had money of all our customers in 1872—all the way through—in our general bank account. We kept no other account.

1194 Q. When you speak, then, in your testimony of the balance in your bank account you mean the balances of account, including money of Sunderland and Hillyer, do you not?

A. I have been speaking of those balances, and I have given the balance of the account of Kilbourn and Olmstead. I have
1361 given the balance to the credit of one of our speculative accounts which was known as that of Kilbourn, Latta & Olmstead, and the dates when you alleged we used your money, and showed that we had on those dates quite large balances to the credit of that account.

1195 Q. Not your own bank balance?

A. Money in bank.

1196 Q. Were the balances in bank to your own bank account or not?

A. No, sir; the balance to that account I have spoken of.

1197 Q. They were simply balances which showed a credit to a certain account in your books; is that correct?

A. That is correct.

1198 Q. They do not show that there was any money which could be immediately made available on account of those credits or whether they could not, did they?

A. Well, Colonel, that is rather an absurd question. We had your money at that time, and we had a large amount of money belonging to other people at that time, and this was one of considerable account. The amount that was to the credit of that account

1362 was just the same as reading off the amount to the credit of Sunderland and Hillyer, and it would show that we had so much money. For instance, if you go to bank and call for your account they will tell you that your account is credited with so much money—say $10,000. They would not tell you that that was all the money they had in the bank. Now, we had this money all the time.

1199 Q. What money?

A. The money that account showed.

1200 Q. Where did you have it?

A. Had it in bank. How the devil could we have it in any other place if it was credited to the account? In book-keeping everything credited must be debited somewhere; it must be in cash or something else.

1201 Q. I understand you, then, to testify that at the dates you have mentioned in your former testimony upon redirect examination you gave balances of an account of Kilbourn, Latta, and Olmstead that at this time Kilbourn, Latta, and Olmstead had in bank belonging to themselves of the amounts which you have there mentioned?

A. I have not testified to that, but I will testify now that I

1363 believe we had—I believe we had not only that, but large balances often of your money. Our accounts were kept in this way——

1202 Q. I do not care about how your accounts——

A. I do.

1203 Q. You were not asked a question about that.

A. I will explain. You have confused this thing before by not knowing anything about book-keeping, and I would like to explain it. We might have had on a certain day $20,000 of your money, and on the next day we might not have had a cent in the bank, because we might have paid out the money we had in bank for some speculative operation that we were carrying along for Jones or Smith or Brown, and on the third day we would be all paid in and a large surplus left. Now, we might have on this day a large balance of our own in bank and not a cent of your money; we might use our own money and we might use yours, or the Real Estate Association, or anybody else's. Our bank account was the same as a banker's business. If a bank buys notes to-day they do

1364 not stop to find out whether they are using your money or my money, but take the average of what is to be used and

make interest on it; and we did that all the way through, both with you and everybody else.

1204 Q. How much money did the members of the Real Estate Association put up with the firm of Kilbourn and Latta prior to May, 1872?

A. Well, that is a matter that is none of your business; but I will gratify you by telling you that they put up $50,000.

1205 A. That was $5,000 a share?

A. I do not know.

1206 Q. Were there not ten shares in the Real Estate Association?

A. I do not know about that. I am not testifying in regard to that now.

1207 Q. Do you mean to say that you do not know or that you do not want to testify?

A. Did I say I did not want to testify?

1208 Q. I ask you.

Mr. WILSON: I object, because the question is wholly immaterial to this case; and now I repeat what I have stated once before, that if that question is insisted upon we tender ourselves ready to
1365 go before the court and let it decide whether it is pertinent to the case or not. If the court says it is I withdraw all objection, but I cannot see the relevancy or pertinence of the question myself.

Mr. TOTTEN: I join in that.

Mr. HILLYER: Well, I want to know the answer.

A. I have no answer to make.

At this point the further taking of testimony was adjourned until Wednesday, the 8th day of March, A. D. 1882, at the same place, at half past seven o'clock p. m.

WM. T. S. CURTIS, *Examiner.*

1366 WASHINGTON, D. C., *July 7th*, 1882.

Met, by agreement, at the office of J. F. Olmstead, New York avenue, Washington, D. C., at 7.30 p. m.

Present: Mr. C. J. Hillyer and Mr. J. H. Ralston, for the complainants; Mr. Enoch Totten, for defendants Kilbourne and Olmstead, and Mr. J. M. Wilson, for defendant Latta.

Mr. OLMSTEAD was thereupon called and recross-examined by Mr. HILLYER.

Recross-examination:

1209 Q. Mr. Olmstead, you say in your redirect examination that you have or had a book containing a list of the property which was left with you for sale in 1872. Have you that book now?

A. I do not know whether I have or not.

1210 Q. Will you please see if you have that book?

A. I will have to go and look up a box that contains pa-
1367 pers. I cannot produce it now, if you want it—the book that you wish, as I understand you said, containing the property that was left with us for sale.

1211 Q. Yes.

A. That is all right.

1212 Q. Can you state how long previous to the sale made to Sunderland, Hillyer & Stewart the firm of Kilbourne & Latta had in their hands to sell the property in square 297—that is to say, lots 18 to 25?

A. I do not know that we had it at all.

1213 Q. Do you know how long previous to the time of the sale to Sunderland & Hillyer you had in your hands for sale lots in square 92?

A. That square was not sold to Sunderland & Hillyer, or any lots in it.

1214 Q. Did you not state in your former examination that the lots not sold were sold to Sunderland & Hillyer, or in the settlement made in the latter part of June, 1872, were taken by Thomas Sunderland individually?

A. You know whether that was true or not. My impression is that Sunderland & Hillyer had nothing in that square.

1215 Q. Did you, in June or May, 1872, have an lots in
1368 square 92 in the hands of the firm for sale?

A. I think we had lot one (1); I am under that impression. I do not think we had but one lot there—that is, formally—in our hands.

1216 Q. Can you ascertain definitely whether you had or had not by looking at the book of which you have spoken?

A. I do not know whether that book would show that. We had a great deal of that property as memoranda. Property was very active. It was easier to sell property than it was to buy it or get it for sale, and we would very often speak to people on the street, if we knew they owned it; and we were looking around to see who owned anything, and we very often asked. If we sold it they would pay commission, and very many of the sales made to Sunderland & Hillyer were picked up that way, without having any formal entry on our books of that property.

1217 Q. Do you know whether the firm of Kilbourne & Latta had in their hands for sale prior to May—prior to the first of June—
1872, any lots in square 68?

1369 A. I don't think they had.

1218 Q. Do you know whether they had in their hands any property for sale prior to the 25th day of May, 1872—any in square 67?

Objected to by Col. Totten as irrelevant, as that square has nothing to do with this case.

A. I do not know whether we had or not.

1219 Q. Will you be able to ascertain by looking at the book of which you have spoken?

A. I don't know whether I will or not.

1220 Q. Did you prior to the first day of June, 1872—I mean your firm—have in your hands for sale square 151 or any portion of the same?

Objected to by Col. Totten as being irrelevant.

A. I have answered all these questions in the one answer I have made in regard to this property.

1221 Q. What was that answer?

A. The one in which I stated the condition of the market in which we had property for sale.

1222 Q. Have you intended to state in any evidence which
1370 you have given that *that* prior to the 25th day of May, 1872, that the firm of Kilbourne & Latta had in their hands for sale any of the property or lots which have been mentioned in the preceding questions?

Mr. Wilson objects because it is irrelevant to the case.

Mr. TOTTEN: And I concur.

A. I do not know whether I have or not. It has been a long time since I gave my testimony, and it has been chopped up pretty badly; but whatever I have said it has been correct.

1223 Q. What I wish to know is, whether you now have or whether you have had since the commencement of this examination any recollection, independent of the book to which you referred in reference to the question, whether or not the firm had this property in their hands for sale prior to the date which I have mentioned, of May 25th, 1872?

Mr. WILSON: To what property do you refer in this question?

1224 Q. The property that has been described by me in the preceding questions in this examination.

1371 Mr. WILSON: I object because it is wholly irrelevant to this case.

1225 Q. I mean lots from eighteen (18) to twenty-five (25), in square 97, lots in square 92, purchased by Sunderland & Hillyer; also lots in square 67 and 68, square 134, and square 151, purchased by Sunderland & Hillyer.

A. I do not remember now from what I got the information, or anything in regard to that.

1226 Q. Can you now state from memory whether the firm had in their hands for sale any of the property which I have described?

A. I would not like to say positively anything about it now. When I was examined, if I did give any testimony in regard to that, my mind was refreshed. It has been some time since. I am sure I could not say. I have not thought of this case since.

1227 Q. Have you examined, since your examination in this case commenced, the book of which you have spoken—the book that

contained a list of the property placed by owners in the hands
1372 of Kilbourne & Latta in 1872?

A. I do not know whether I have or not; it seems to me that I have, but do not know positively about that.

1228 Q. Can you state now that any of the property described in the preceeding question was in the hands of Kilbourne & Latta for sale prior to the 25th day of May, 1872?

Col. TOTTEN: I object. That question has been asked before and is entirely irrelevant to this case.

A. I have been over this. It seems to me that every question you have asked has been that one same thing, and that I have answered it to the fullest extent that I am able to-night.

1229 Q. I understand, then, that you are not able to state from memory to-night that any of the property which I have mentioned was in the hands of the firm of Kilbourne & Latta for sale on the 25th day of May, 1872. Am I correct?

A. I have got over answering that question. I am willing to look for this book. I am willing to examine anything else that I have got and to refresh my mind, if it is possible, on this subject,
1373 and answer th isquestion, and I so indicated in my answer to the first question, but what the object is in lumbering up this record with thirty or forty pages of about the same thing I cannot understand.

Col. TOTTEN: I can't either.

1230 Q. In reading the entries in the journal as to square 195, after that portion of the entry which stated the sale and price, you read these words: Commissions, fifteen hundred ($1,500) dollars; payment to Berrett, eleven thousand ($11,000) dollars. Will you explain what was the meaning of the entry—as to commissions first?

A. I suppose those were the entries—the charge to the seller of the property, Riggs.

1231 Q. Do you mean to say that the firm of Kilbourne & Latta charged to Riggs, the seller of the property, commissions upon the sale made to Sunderland & Hillyer?

A. I presume they did. If the entry is there we did.

1232 Q. Will you be good enough to get the book and see if there is any mistake about the making of this entry? I want to see it myself.

(Mr. Olmstead goes for the book and produces it.)

1374 A. What is it you want to know?

1233 Q. You have there the journal and the entry in relation to the purchase of square 195?

A. Yes.

1234 Q. Do you find, then, in that entry these words: Commissions, fifteen hundred ($1,500) dollars?

A. I do.

1235 Q. And paid Berrett eleven thousand ($11,000) dollars?

A. Yes.

1236 Q. Now, I wish to know to whom these commissions were charged?

A. Charged to Riggs.

1237 Q. Were they paid by Riggs?

A. I have just said they were charged to Riggs.

1238 Q. I did not ask that. I asked were they paid by Riggs?

A. These are charged to the account of Mr. Riggs, of course.

1239 Q. My question was and is, Did Mr. Riggs pay these commissions?

A. Of course he did. You don't think we charged them to him for fun, do you?

1240 Q. The firm of Kilbourne & Latta received fifteen hundred ($1,500) dollars for sales on lots in square 195 to Sunderland & Hillyer?

1375 A. There is the entry—you can read it. I have answered it a dozen times, but I can't get it through your head.

1241 Q. I wish you would state whether this is a fact?

A. I have stated five or six times that it was a fact.

Col. TOTTEN: It was a fact with Riggs of fifteen hundred ($1,500) dollars.

1242 Q. What did you mean in your former testimony by stating that the firm of Kilbourne & Latta were the agents of Sunderland & Hillyer in this purchase from Riggs of lots in square 195?

A. I think I stated in that answer all that Kilbourne & Latta had to do with the square. I think I stated that the firm of Sunderland & Hillyer employed Col. Barrett to purchase that square for them, and that the firm of Kilbourne & Latta made out the papers and attended to the details, or something of that kind. It was their own offer to us.

1243 Q. What is the meaning of the words in the entry you have read—Paid Barrett eleven thousand ($11,000) dollars? I mean to ask for what purpose was eleven thousand ($11,000) dollars paid to Barrett?

1376 A. That was the money that was left, I guess. I will have to explain this two or three times more. On the book the square is credited to George W. Riggs at fifty-two thousand five hundred ($52,500) dollars. George W. Riggs is charged with the note of James M. Latta for forty thousand ($40,000) dollars. He is charged with commissions fifteen hundred ($1,500) dollars. He is charged with check paid James G. Berrett eleven thousand ($11,000) dollars. That balances the account. I don't know what all this has to do with this case; it is not a part of it in any way.

1244 Q. Who paid commissions on lot three (3), in square 158?

Col. Totten objects.

A. I don't know without going back to look it up.

1245 Q. I wish you to look at the entry in purchase of lot three (3), square 158, and state, if you can, who paid the commissions.

A. I do not know whether that has anything to do with your

business in any way. If it is in the journal I will have to go and hunt it up. This journal has only one case in it. The seller paid the commissions.

1377 1246 Q. Who was the seller?

A. What is it your business?

1247 Q. I wish you to state who paid the commissions.

A. Who the seller was? T. H. Hooe.

1248 Q. Who paid the commissions on lot three (3), square 192?

A. I do not know.

1249 Q. You can let it go that way, if you choose. Did Kilbourne or Olmstead, either of them, owe Latta at the time of the dissolution of Kilbourne & Latta?

A. That is none of your business, and I decline to state.

Mr. Wilson objects.

1250 Q. Was any property purchased by or for the Real Estate Association after May, 1872? If so, what?

Mr. WILSON: I object to that question because it is irrelevant and of no value in the controversy in any way.

Col. TOTTEN: So do I.

1251 Q. You referred in your re-examination to a suit about an assessment for a sidewalk on square 156. When was that suit commenced?

A. I do not remember now. I think——

(Mr. TOTTEN: That is a matter of record which you can
1378 easily ascertain, if there was a suit commenced.)

A. I don't remember, but think it was in 1875 or '6; it was at whatever time they attempted to sell it for taxes.

1252 Q. In whose name was the suit commenced?

A. The record will show. I think it was James M. Latta, trustee.

1253 Q. When was the assessment made for that sidewalk which was the object of the suit to enjoin?

Mr. TOTTEN: I object, as this is a matter of record.

A. I do not know anything about the date of it.

1254 Q. Was it before or after the purchase of the property by Sunderland & Hillyer?

A. The whole thing is a matter of record and I don't remember. My recollection of it is that — assessed three or four months before this suit was brought.

1255 Q. Before this suit?

A. Before this injunction was applied for. The papers will all show.

1256 Q. To whom was it assessed?

A. Assessed to Thomas Young.

1257 Q. If it was assessed to Mr. Thomas Young it must
1379 have been for some improvement alleged to have been made at the time Mr. Young was owner.

A. That is something I am not here to answer. That is a question of law.

1258 Q. Why did you then state that this was a part of the services performed by Kilbourne & Latta for Sunderland & Hillyer?

A. Because it was a fact.

1259 Q. Who were the attorneys in the suit?

A. Mr. Mattingly.

1260 Q. Who paid Mr. Mattingly?

A. To the best of my knowledge and belief, he has not been paid yet. He was speaking about it not long ago.

1261 Q. Do you know what the result of that suit was?

Mr. WILSON: That is a matter of record. I object to it.

A. I have been all over this matter, Col.—explained the whole thing in my direct examination and on my cross-examination, and in answer to this question — that the result was that that tax was upset.

1262 Q. How were Sunderland & Hillyer interested in that suit?

A. Taxes against their property.

1380 1263 Q. Did the firm of Kilbourne & Latta ever pay anything toward that suit?

A. I think we paid the court costs.

1264 Q. Do you know that to be a fact?

A. The record will show, and the account current of the firm.

1265 Q. Have you in your office the contract in writing that was made between Sunderland, Hillyer, and yourself in reference to the revision of the special improvement tax in the year 1878?

A. I have.

1266 Q. Will you produce it?

A. Yes.

The witness now produces the contract, a copy of which is hereto attached, marked Exhibit J. F. O. No. 13.

1267 Q. The context of this is in your handwriting?

A. Yes.

1268 Q. I see no date in ink, but a pencil date. Was that date put upon it at the time it was signed?

A. I don't know.

1269 Q. What is the pencil date?

A. July 6th, 1878.

1270 Q. Well, I believe I am through.

Adjourned until Monday, July 10th, at 10 o'clock, when
1381 the examination will be continued on the request of C. J. Hillyer, but without the consent of the defense and over the objection of the defendants' counsel. Counsel for the defendants state that they are engaged in court on trials and that they cannot come.

WM. F. S. CURTIS, *Examiner.*

1382 THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLETT KILBOURNE, JOHN F. OLMSTEAD, and JAMES M. LATTA. } Equity 7764.

WASHINGTON, D. C., *October* 10, 1882.

Met pursuant to notice.

Appearances: For the plaintiffs, Messrs. Hillyer and Ralston; for the defendants, Messrs. Totten and Wilson.

Mr. J. F. OLMSTEAD, who had been requested to take the stand for further examination, stated that he was not quite prepared to answer certain questions and would like until to-morrow to prepare. Whereupon an adjournment was taken until to-morrow, the 11th of October, at 3 o'clock p. m.

1383 THOMAS SUNDERLAND and CURTIS J. HILLYER
vs
HALLETT KILBOURNE, JOHN F. OLMSTEAD, and JAMES M. LATTA. } Equity 7764.

WASHINGTON, D. C., *October* 11*th*, 1882.

Met pursuant to adjournment.

Present: Messrs. Hillyer and Ralston, for the plaintiffs; Messrs. Totten and Wilson, for the defendants.

JOHN F. OLMSTEAD recalled for further examination on behalf of the defendants.

Redirect examination by Mr. TOTTEN:

1271 Q. Did you receive letters from either Sunderland or Hillyer during the year 1872, and after they left the city, in 1873, 1874, and 1875, up to the dissolution of the firm of Kilbourne and Latta from Sunderland & Hillyer or either of them?

A. I do not remember to have ever seen but one letter from
1384 Mr. Sunderland; that, I think, was written from Interlachen, in Switzerland.

1272 Q. Did your firm write letters to either of these gentlemen or both of them about their business from time to time from the time they left the city up to the time of the dissolution and after?

A. We did.

1273 Q. Did they pay any attention to them?

A. They generally responded by way of sending money or telegrams. They never responded by writing.

1274 Q. Neither of them?

A. Neither of them. I do not remember of ever receiving a letter from Colonel Hillyer.

1275 Q. They have testified on several different occasions during the examination in this case that they never received any intimation or advice of the charge for care and management of the property until an account was sent to them in July or about that time, in 1878. Please to state whether you did, in the latter part of 1872

and 1873, 1874, and 1875, send a letter to them or either of them giving accounts of the business in your hands in which they were interested.

1385 A. We did, repeatedly. We sent them an account current of their business on the 6th of September, 1873, and from that time until in the latter part of 1874. I do not know whether it was later than that or not, but up to that time we sent them statements of the amounts that we received from them and the accounting of its disbursement for them; also a statement of the amounts that would be required to make payments for four or five months ahead; so that taking the account current that was sent to them in September of 1873 and putting with it the accounts that were sent from time to time as long as they were sent would show them exactly how their account stood at any time.

1276 Q. Did you retain copies of the accounts rendered to those gentlemen in your office?

A. We did.

1277 Q. Can you produce them?

A. I can.

1278 Q. Be good enough to do so, beginning with the earliest date.

A. (Exhibiting.) I have here one statement which says:

1386 "Abstract of the purchases of Sunderland, Hillyer & Company, showing the cost of the respective parcels purchased, the amount of the deferred payments, with the time of their maturity, the rate of interest thereon, and how the same is payable."

1279 Q. What is the date of that paper?

A. It is not dated.

1280 Q. Was a copy of that sent to Messrs. Sunderland & Hillyer?

A. A copy of that was given to each of them.

1281 Q. When?

A. When they were here, in 1873.

(The paper was offered in evidence and is hereto attached, marked "J. F. O. No. 13½.")

The WITNESS: The account current of Sunderland & Hillyer was rendered to them on the 5th of September, 1873, and a copy sent to Thomas Sunderland on that date. On the same day we rendered to them an account showing the payments that would mature during the year 1873, exclusive of taxes.

1282 Q. To whom did you send it?

A. We gave a copy to Colonel Hillyer and sent a copy to Thomas Sunderland.

1283 Q. About what date?

A. September 5, 1873.

1387 (The paper was offered in evidence and hereto attached, marked "J. F. O. No. 14.")

The WITNESS: On the same day we sent to Thomas Sunderland a statement of the amounts due to January 1, 1874.

1284 Q. Have you a copy of that statement?
A. I have.
1285 Q. Please hand it to the commissioner to be filed as an exhibit.

(The paper was offered in evidence and is hereto attached, marked "J. F. O. No. 15.")

The WITNESS: On the 7th of March, 1874, we made a statement, and a copy was given to Colonel Hillyer, showing the proportionate amounts belonging to Thomas Sunderland and C. J. Hillyer, respectively, of the several payments made to Kilbourne & Latta for the account of Sunderland & Hillyer from June 26, 1872, to January 24, 1874.
1286 Q. Have you a copy of that statement?
A. I have.
1287 Q. Hand it to the commissioner to be filed as an exhibit.

(The paper was offered in evidence and is hereto attached, marked "J. F. O. No. 16.")

1288 Q. What is the next statement you have?

1388 A. On that same day we rendered to Colonel Hillyer a statement showing the amount paid to the 24th day of January, 1874, on the several properties of Sunderland & Hillyer to Kilbourn & Latta to be $205,000.
1289 Q. Have you a copy of the statement?
A. I have.
1290 Q. Please hand it to the commissioner to be filed as an exhibit.

(The paper was offered in evidence and is hereto attached, marked "J. F. O. No. 17.")

1291 Q. What is the next statement?
A. The 1st of February, 1874, we rendered to Thomas Sunderland a statement showing the amounts due by him to February 1, 1874, exclusive of taxes. By the way, this has some of his figures on it.
1292 Q. Is that a copy of it?
A. It is.

(The paper was offered in evidence and is hereto attached, marked "J. F. O. No. 18.")

The WITNESS: On the 7th of March, 1874, we made an account and gave it to Col. Hillyer showing the statement of taxes remaining unpaid against the property of Sunderland & Hillyer, so far as the bills had been rendered, to March 7, 1874, and this statement
1389 shows that sewer taxes, which I have stated was the item for the care and management of the property that we were instrumental in relieving their property from, amounting to $17,181.40.
1293 Q. Have you a copy of the statement?
A. I have.

1294 Q. Please hand it to the commissioner to be filed as an exhibit.

(The paper was offered in evidence and is hereto attached, marked "J. F. O. No. 16.")

The WITNESS: In this I find that we took some interest in their property, being desirous of saving them as much as we could, and advised them here that in regard to some of these taxes lien certificates would be issued before a great while, and if they were paid before the certificates were out they could pay in improvement and sewer bonds, which could then be bought at about twenty per cent. less than par and no interest, and thereby they could save 20 per cent. and interest from September, 1873, by prompt payment.

1295 Q. When did you send the next report?

A. On the same day we rendered to Colonel Hillyer an account showing the amounts to be paid by Sunderland and Hillyer for the year 1874.

1390 1296 Q. Did you hand that to him or send it to him?

A. Handed it to him so marked.

1297 Q. Hand that to the commissioner to be attached as an exhibit.

(The paper was offered in evidence and is hereto attached, marked "J. F. O. No. 20.")

1298 Q. What is the next report?

A. The next report is on the 20th of May.

1299 Q. What year?

A. 1874. We rendered to Colonel Hillyer a statement showing the amounts paid for Sunderland & Hillyer since June 26, 1872, the date of their last settlement.

(The paper was offered in evidence and is hereto attached, marked "J. F. O. No. 21.")

1300 Q. What is the date of the next statement?

A. The next is a statement sent to Thomas Sunderland showing the payments due by Sunderland & Hillyer and Thomas Sunderland.

1301 Q. When was that sent to Sunderland?

A. On the 22nd of June, 1874.

1302 Q. You have a copy of it?

A. I have.

1303 Q. Hand it to the commissioner to be filed as an exhibit.

(The paper was offered in evidence and is hereto appended, marked "J. F. O. No. 22.")

1391 The WITNESS: The next is a statement of payments to be made by Sunderland & Hillyer from Oct. 1 to Dec. 31, 1874.

1304 Q. When was that sent?

A. By mail to Thomas Sunderland, Sept. 17, 1874.

(The paper was offered in evidence and is hereto attached, marked "J. F. O. No. 23.")

1306 Q. What is the date of the next statement?

A. I have skipped one. I find one here that was given to Colonel Hillyer on the 9th of October, 1873, showing payments to be made by Sunderland & Hillyer during the year 1874.

1307 Q. Hand it to the commissioner to be filed as an exhibit.

(The paper was offered in evidence and is hereto appended, marked "J. F. O. No. 24.")

1308 Q. What is the date of the next statement? What was done with it?

A. That is all I have copies of here.

1309 Q. Have you any recollection of any others being send after that date?

A. I do not remember whether we sent after that or not.

1310 Q. Subsequently to that last date did you continue to keep track of this property as to its condition, what was going on about it, and to advise the complainants on that subject?

1392 A. We did, as fully as we had done to that time.

1311 Q. The firm of Kilbourne & Latta was dissolved on the 31st of December, 1876, was it not?

A. It was.

1312 Q. You sent after that, did you—furnished Sunderland & Hillyer, either or both of them, a statement of account containing a charge for this care and management?

A. Yes, sir.

1313 Q. How did you furnish it?

A. In my direct examination, or my cross-examination, I have forgotten which, I stated that that account was furnished in June of 1878; I now think that the account was furnished to them in November, 1877.

1314 Q. Do you know whether it was furnished in November, 1877, or not?

A. I think it was. I furnished them a copy immediately after the suit was commenced by Kilbourne & Olmstead against Latta and the suit of Latta against Kilbourn & Olmstead. I furnished

1393 Sunderland and Hillyer copies of the bill and answer in each case, and I am very positive at the same time I sent them an account current of their account with Kilbourne & Latta, from this account that is filed here, up to the time of the dissolution of the firm.

1315 Q. What was the date when the suits were begun?

A. The 10th day of November, 1877.

1316 Q. Were they both begun the same day?

A. Yes, sir.

1317 Q. Did this account contain all the matters and things relating to Sunderland & Hillyer up to the dissolution of the firm?

A. It is the account that is filed in this testimony—filed by Sunderland.

1318 Q. Showing that item?

A. Showing that item. The account that I rendered them in

June, 1878, is the account from the dissolution of the firm of Kilbourne & Latta up to that time.

1319 Q. To whom did you send it, to Sunderland or to Hillyer, or both?

A. I think I sent the account current to Sunderland.

1320 Q. And not to Hillyer?

A. No, sir; I do not think I sent it to Hillyer. I think I
1394 sent him a copy of the pleadings. I know it was our purpose to furnish them everything that had been done. We thought at that time that Mr. Latta would probably write them and give his version of things, and instead of writing them we would simply send them the facts as they were.

1321 Q. You did not get an acknowledgement of the receipt from Sunderland?

A. I do not know that we did. I do not think we ever got any acknowledgement at all from either of them.

1322 Q. That statement of the account was intended to and did show the balance due to Sunderland & Hillyer at that time?

A. This is it (referring to exhibits in the first volume of testimony taken by Commissioner Johnson in this case, marked respectively "C" & "D," "J. J. J.," and attached to the deposition of Thomas Sunderland).

1323 Q. When did you first hear objections to that account from either of those gentlemen?

A. Some time in July, 1878.

1324 Q. Did you have none prior to that date?

A. No, sir.

1325 Q. Since the original bill in this case was filed and the first amendment to the original bill was presented, in which pretty
1395 much the same charge as to square 156 in the original bill had been made as to the other squares, will you please tell the history of the connection of Kilbourne & Latta with square 156, and also the connection of Sunderland & Hillyer and Stewart, or either of them, with that square?

A. That was one of the first purchases Sunderland & Hillyer and Stewart made. It was at that time owned by the Real Estate Association.

1326 Q. How long had the Real Estate Association owned it?

A. I think they bought it in October, 1871, and sold it to them in May, 1872.

1327 Q. About the 27th, was it not?

A. Some time about there; I have forgotten about the date.

1328 Q. You have already testified in regard to that.

A. I have already testified just what was done with it.

1329 Q. Was there any special agreement in respect to square 156 by Kilbourne & Latta, on the one side, and Sunderland & Hillyer, on the other?

A. None whatever.

1330 Q. How was that brought to the attention of Sunderland & Hillyer?

A. I do not remember whether they first spoke of it as wanting it or whether we spoke to them about selling it to them.

1396 1331 Q. Can you say whether they knew the Real Estate Association owned it or not?

A. I know they did.

1332 Q. How do you know that?

A. I am positive about that. I know very distinctly the whole matter was discussed, the price that was paid for it, and the price they paid for it, and how much was made by the Real Estate Association out of it.

1333 Q. Did the firm of Kilbourne & Latta ever represent to those gentlemen or either of them that they were buying it from somebody else at so much?

A. They knew just who owned it, and all about it. They did not know who composed the Real Estate Association, but they knew who managed and owned it.

1334 Q. Have you read the testimony of Mr. Charles Eldredge in this case?

A. I have.

1335 Q. He testifies substantially that he did not know about the price paid for square 156 nor the price at which it was sold to Sunderland, Hillyer & Co. What do you say about that?

A. I think he has forgotten. I think there were two per-

1397 sons connected with the Real Estate Association who did know all about —; one was Charles A. Eldredge, the other was Henry D. Cooke.

1336 Q. Did Mr. Eldredge know what the difference was between the price paid by the Real Estate Association and the price paid for it by Sunderland, Hillyer & Co.?

A. Oh, yes; we talked very frequently with him in regard to the matter of the property of the Real Estate Association; more frequently than we did with any one else.

1337 Q. What interest, if any, did Mr. Eldredge take in the business of that Real Estate Association, and how much was he about the office of Kilbourne and Latta, and how much did he know of the business connected with that association?

A. He was generally pretty thoroughly posted. I don't know about details. I don't know whether he knew about them. He was about the office every day or two. He had money to invest, and was then talking about —. I do not know but that he had made an arrangement by which we bought property for him on joint account. Square 155 was bought in his interest. He and Kil-

1398 bourne and Latta bought it on joint account. That was sold to Sunderland and Hillyer.

1338 Q. You have already given the details connected with that?

A. Yes, sir.

1339 Q. He got $2,000 for his share?

A. Yes, sir; and never put a cent into it.

1340 Q. Do you know whether Sunderland and Hillyer or Stewart, or either of them, knew of the offer made by Mr. E. C. Ingersoll for square 115?

A. I do not think they did.

1341 Q. Were they in any way that you know of told that they could sell it to him and make $5,000?

A. I do not know whether they were or were not. I never said anything to them about it.

1342 Q. Can you give any idea about how many customers you had in April, May, and June, 1872, who were running about your office and getting information from day to day and from time to time?

A. We had a great many—a large number—I could not specify.

1343 Q. Were there ten or fifty? Make an estimate.

A. There were three times fifty—plenty of customers there for real estate.

1399 1344 Q. There was plenty of money in the city then, was there not?

A. Yes; and property was advancing in value very fast.

1345 Q. Were you present at a conversation over this table, in your other office fronting on 15th street, between Hillyer and Mr. Latta, of the firm of Kilbourne and Latta, some time in 1875, when the subject-matter of compensation to Kilbourne and Latta for the care and management of their property was brought up and discussed?

A. I think that conversation was in 1873 instead of 1875—Oct., 1873. I was present during a portion of that conversation.

1346 Q. Will you state, as far as you can, what passed between Latta and Mr. Hillyer on that subject?

A. I could not state any further than I have stated in regard to that. I heard some portions of that conversation. I know that I heard Mr. Latta tell Mr. Hillyer that what he thought a reasonable compensation would be one per cent. on the cost of this property that was talked about—about $600,000.

1347 Q. Had you, prior to that time, or had any of you, in-
1400 quired as to the kind of compensation that prevailed for such services in this District?

A. We had made inquiry of Mr. Mattingly.

1348 Q. Was anything said about that at the time of this conversation to Mr. Hillyer?

A. I do not remember anything to have been said. I only heard a portion of the conversation.

1349 Q. Who else was there?

A. Mr. Kilbourne was there a portion of the time. We were both there, but he was in the back office more than I was.

1350 Q. Where did this conversation take place?

A. In the back office, on Fifteenth street.

1351 Q. How long did the conversation last between Mr. Latta and Mr. Hillyer?

A. About five or ten minutes.

1352 Q. Were you there at the beginning of it?

A. I was. Mr. Hillyer introduced the subject by asking Mr. Latta—speaking of the change in the market, the panic having occur-ed, property being depressed, and the probability that there

would be no sales of the property—as to what we were going to charge him for taking care of his property.

1353 Q. Was that conversation early in 1873 or late?

1401 A. October, 1873.

1354 Q. It was after the failure of Jay Cooke and Co.?

A. My recollection is that it was a few days after Mr. Hillyer's return from Europe.

1355 Q. Did you hear Mr. Hillyer say anything about it?

A. No, sir; I do not remember having heard him say anything except the introduction of this subject, asking what we were going to charge.

1356 Q. Mr. Latta said he thought one per cent. on the purchase price would be fair?

A. He said he thought that would be a low estimate.

1357 Q. You did not hear Mr. Hillyer say anything about that?

A. No, sir. I do not know but that I heard him say that was high and that three-quarters of one per cent. would be a large price. I do not know whether I got that in my mind from my conversation with Mr. Latta on that subject or not; I know that it was impressed upon my mind that three-quarters of one per cent. would be satisfactory to Mr. Hillyer. Whether it was by Mr. Latta or by the conversation I do not know. When we came to fix

1402 this price of $5,000 a year at our estimate of percentage it amounted to a little over $6,000, and on Hillyer's estimate, three-quarters of one per cent., it would have amounted to a little less than $5,000; so we called it $5,000 a year.

1358 Q. The original bill in this cause was filed on the 9th day of June, 1881, and the dissolution of the firm of Kilbourne and Latta occurred on the 31 of Dec., 1876. Now, has there been any settlements, any transfers, or changes in the position, of any kind, between Kilbourne and Olmstead, on the one side, and Latta, on the other, since that dissolution?

A. There have been changes in the relations—the relations of all the parties, both Latta and Kilbourne and myself.

1359 Q. Any between the middle of July, 1878, and the filing of this bill?

A. Yes, sir.

1360 Q. State what took place in the way of changes of position after the dissolution of the firm and within three or four years of it.

A. Well, we have settled with Mr. Latta, and the firm that was formed when Latta went out—Kilbourne and Olmstead—has been dissolved, and that has been settled also.

1403 1361 Q. Any transfers of real estate to Mr. Latta?

A. I think not.

1362 Q. Was any of the trust property which was in the name of Kilbourne conveyed to Latta after that?

A. Latta has transferred a good deal of property that he held for Sunderland and Hillyer.

1363 Q. To whom?

A. To such parties as they might designate.

1364 Q. And did designate?

A. And did designate.

1365 Q. Can you name any of them?

A. He transferred—no; I cannot name them. I think he transferred to Mr. Sunderland quite a large piece and to Mr. Hillyer quite a large amount.

1366 Q. Prior to the filing of this bill?

A. Yes, sir.

1367 Q. Prior to the filing of the bill in Indiana?

A. Yes, sir.

1368 Q. When did you first receive an intimation that these gentlemen were dissatisfied with the business of the firm of Kilbourne and Latta—when did they first threaten suit against you?

A. The first intimation I had—I did not consider it amounted
1404 to anything; I never considered any of it amounted to anything, so far as Kilbourne and I were concerned—was in July, 1878. They said something about this charge for the care and management of their property; they thought it was too much. I do not know whether they wanted us to make it something less, or whether they said anything further about it. They thought it was too much. They did not have much to say about it, anyhow. I did not hear any more about it. Oh, I had a conversation with Messrs. Sunderland and Hillyer, at their rooms at the Arlington, in regard to it a day or two before Mr. Hillyer went away, in which they brought up the subject.

1369 Q. In what year?

A. In 1878. It was there stated by both of them, so far as Kilbourne and I were concerned, they did not care anything about it, but they proposed to go for Mr. Latta. When that receipt for $2,715 was given, it was given with the understanding that it would be a
1405 receipt in full for all demands, except that they did not want to have it a bar to any claim they might make against Latta, because he acted so badly they proposed to go for him.

1370 Q. With whom did you have that conversation?

A. Mr. Sunderland.

1371 Q. That was filed in your testimony, was it not?

A. Yes, sir.

1372 Q. The receipt for the settlement of $2,715 for the matters and things in reference to Kilbourne & Latta?

A. It was a receipt for $2,715.

1373 Q. It is filed?

A. Yes, sir.

1374 Q. Now, you had a conversation, at that time, with which member of the firm of Sunderland & Hillyer?

A. Sunderland.

1375 Q. Where did it take place?

A. I think in our front office on Fifteenth & G Sts.

1376 Q. That was the balance exhibited by the account stated and rendered by you to the firm of Sunderland & Hillyer?

A. It was.

1377 Q. And that exhibited is one of the exhibits filed in the

testimony by Hillyer and tacked onto his deposition on file—
1406 at all events, in some part of this case?

A. It is filed somewhere.

1378 Q. Can you relate the conversation between you and Sunderland at that time, with any degree of accuracy? You have usually a pretty good memory.

A. I have detailed that.

1379 Q. I believe you have. Will you not give us a history of the giving of that receipt for $2,715? As I understand, there was a suit pending between Kilbourne and Olmstead, upon the one side and Latta on the other, in this District, and that receipt was given by Hillyer & Sunderland some time during the pendency of that suit. What was the history of it?

A. Well, I have given that very fully. Do you want it again?

1380 Q. No, sir; not if it is in the record.

A. It is in the record fully. I will state, as far as this matter is concerned, that in regard to this $2,715 receipt, when I first spoke to Mr. Sunderland about it I prepared an account taking up the balance which was due to Sunderland & Hillyer on the 1st day of January, 1877, which was $18,158.40, and that account
1407 showed the disbursement of that money. It was an account current with Kilbourne and Olmstead, showing a balance of $2,715.58 as due Sunderland & Hillyer. In red ink diagonally across that account I made out a receipt for Sunderland to sign and he was about to sign it. He took it home—no, I took it up to them, I think, at the Arlington and he agreed to sign it. In the morning he came down and brought it to me, and stated that this would be a bar as against Latta; that Latta could put in this account in connection with the account current as rendered by Kilbourne & Latta; it would show a receipt in full of all accounts against Sunderland & Hillyer, and that he did not want that done. Then he proposed to make out a simple receipt for $2,715.58, and gave that to me. The account current which I rendered to him and on which I wanted a receipt should be an exhibit in this case, if it is not.

By Mr. WILSON:

1381 Q. Now, I want to know, in regard to that, if it is not in the record. What was the understanding or agreement
1408 between you and Sunderland and Hillyer? Was that a receipt in full of all demands, so far as Kilbourne and Olmstead were concerned?

A. It was a receipt in full of all demands up to that time. He did not want the receipt in any other form, because he wanted to pursue Latta, and the agreement between him and me was that I would not use it in that case as a bar. I would use it in no other way; simply file it.

1382 Q. As a bar against Latta?

A. No, sir; that I would not use it in any other way than file it. He did not want it used as a bar in reference to Kilbourne and me. It was a receipt in full. As I have stated in my cross-examination,

up to the day before I went to Indiana to take Latta's deposition, which was about the middle of August, 1880, I had a conversation with Mr. Hillyer, in which he reiterated the whole thing in substance, that, so far as Kilbourne and I were concerned, in reference to this charge for care and management, he did not care anything about that. We were not to be served with any process out
1409 there; that he was going to sue Latta in Indiana; that if Kilbourne and I were going there we should not be put to any trouble; that he was going to sue us here, for the reason that he wanted to reach Latta here. As I said, so far as this suit is concerned, I did not think it amounted to anything, so far as Kilbourne and I were concerned, until we commenced taking testimony.

By Mr. TOTTEN:

1383 Q. Did Mr. Hillyer say anything touching the character of his statement in reference to that receipt for $2,715?

A. I do not think Mr. Hillyer said anything about that receipt at all.

1384 Q. Did he allude to that in the conversation in August, 1880, when you were going to Indiana?

A. He did not, if I remember.

1385 Q. Did he give you any intimation that there was a final settlement between Kilbourne, Olmstead, & themselves?

A. He gave me no further intimation but to say that, so far as Kilbourne and I were concerned, he did not care anything about the suit, and we need not worry ourselves about it.

1410 1386 Q. Did he say he would press the suit—prosecute it?

A. He said this: He had to bring the suit against the whole firm in order to reach Latta.

Adjourned until to-morrow, the 12th of October, at 3.30 p. m.

WM. F. S. CURTIS, *Examiner.*

1411 WASHINGTON, D. C., *October* 12, 1882.

Met pursuant to adjournment.

Appearances: For the plaintiffs, Messrs. Hillyer and Ralston; for the defendants, Messrs. Totten and Wilson.

J. F. OLMSTEAD being further examined by Mr. TOTTEN:

1387 Q. At the time the firm made this sale of square 156 to Sunderland and Co. was the title in Latta or Kilbourne or any of you people?

A. The title was in Hallett Kilbourne, trustee for the Real Estate Association, who owned it.

1388 Q. From whom was that conveyance made to Kilbourn as trustee?

A. From Thomas Young.

1389 Q. About when?

A. The 9th day of October, I think, 1871.

1390 Q. Was the deed recorded?

A. It was.

1391 Q. Do you know when?

1412 A. I do not; I have not seen it. I presume it was recorded on the 2nd day of October, 1872.

1392 Q. You think it had not been recorded when the sale was made to Sunderland & Co.?

A. I do not know whether it had been or not, but the paper will show. I have not the paper nor record to show.

1393 Q. Where is the deed?

A. I do not know whether it is in the hand of Sunderland or in the hand of Latta.

1394 Q. Do you mean the deed to Kilbourne?

A. I think I have that deed.

1395 Q. Have you looked for the deed from Mr. Kilbourne?

A. I have.

1396 Q. Have you found it?

A. I have not; I think it must have been delivered to Sunderland and Hillyer—one or the other of them.

1397 Q. Do you know, or have you ever known, when it was recorded?

A. I have no knowledge about it at all.

1398 Q. Do you think it was delayed until October 2d, 1872?

A. I could not say anything about the recording of it.

1413 1399 Q. Do you know what the consideration is, as mentioned in the deed from Young to Kilbourne?

A. I can tell that by referring to the books. (After examining books.) The deed is dated October 2, 1871. The Real Estate Association is charged with the property, square 156, at $65,748.

1400 Q. On what date is that charge made?

A. The charge is made on the 4th day of October, 1871, the day the transaction was closed.

1401 Q. That consideration is probably mentioned in the deed?

A. That consideration is expressed in the deed, I remember.

1402 Q. When this square 156 was sold to Sunderland and Hillyer did the Real Estate Association get any credit for it?

A. They did. On the 27th day of May, 1872, the Real Estate Association is credited with the price for which it was sold to Sunderland and Hillyer—$90,429.90. The Real Estate Association is charged with the amount of the indebtedness which was then on the square and assumed by Sunderland and Hillyer, $53,405.76. They are charged with a note of Sunderland and Hillyer on James M. Latta, trustee, payable in one year—$17,000. They are

1414 charged with our commissions, $4,521.50, and with the deed of acknowledgment—$5.00. The balance stands to the credit of the Real Estate Association. Sunderland, Hillyer and Co. on that day are charged with the price of this square—$90,429.90.

1403 Q. What is the book which you have before you?

A. It is the journal of Kilbourne and Latta for the years 1871 to 1875.

1404 Q. Have you made those statements which you have just made from the book?

A. I have. I have made them before in my testimony.

1405 Q. Did Mr. Eldredge have knowledge of that transaction and those entries?

A. I do not know whether he had any knowledge of the entries. He had knowledge of the transaction.

1406 Q. Did you tell Sunderland and Hillyer about it yourself?

A. I do not remember whether I did or not about that time. It was the first purchase they made of the property, and whether at that time I had any conversation with them in regard to it I cannot say. I know that they were informed. It was a long time
1415 that they were talking about it—of the price that was paid by the association, and the price they paid for it.

1407 Q. Mr. Eldridge makes some unexplained statements in his deposition about having taken a lot in settlement of his real estate in the Real Estate Association or the Real Estate Pool, if you please. I want you to make your statement about that and tell us whether Mr. Eldredge got what was satisfactory to him in the settlement or what he asked, and if he did not, what he did get?

A. I gave him his choice of fifty pieces of property, I presume, for his interest in the Real Estate Association, and he selected the piece of property that he took out of these various pieces after going around with me and looking at every one of them, and stated the difference that he would take for what was due him, which was $400. I gave him a check and that check is a receipt in full of all demands.

1408 Q. Mr. Eldredge put into the Real Estate Association $5,000?

A. $7,000.

1409 Q. That is all?

1416 A. That is all.

1410 Q. The property on hand for the Real Estate Association in 1873 and 1874 became somewhat of a drag?

A. About 40,000 feet of it. It is somewhat of a drag.

1411 Q. Still?

A. Yes, sir.

1412 Q. How many thousand feet?

A. Eighty—no, forty thousand feet.

1413 Q. Is there anything else you want to state about square 156?

A. I believe I do not think of anything else.

1414 Q. You have generally a perfect knowledge of the system of securities in the District with deeds of trust?

A. I have.

1415 Q. What are the commissions which usually prevail in the District where trustees make sales?

A. Under deed of trust?

1416 Q. Yes, sir.

A. Up to within the last two or three years it was the invariable or almost invariable rule to give five per cent. Within the last two or three years deeds of trust have been drawn at two per cent.
1417 I think two or three per cent. is the rate now.

1417 Q. What was the rule in relation to commissions in

case there was an advertisement and no sale? Where there was no sale, what was the general rule?

A. That was expressed in the deed of trust. Always, in the event of no sale or advertisement or any proceedure by the trustees, they would be entitled to half the commission stipulated in the trust deed.

1418 Q. Mr. Latta was trustee as the representative of the firm in how much property for Sunderland and Hillyer and Co., estimated at the purchase price?

A. Well, I think it was in the neighborhood of $600,000.

1419 Q. If that property had been sold under a trustee's sale how much would his commission have been?

A. I do not understand.

1420 Q. Suppose that property had been sold by trustees under deeds of trust, what should the commissions have amounted to?

A. They would have amounted to five per cent. of the entire trust, of what the property would bring.

1418 1421 Q. Was Mr. Latta trustee in any deeds to secure deferred payments in any of those cases, or was he only trustee for the benefit of Sunderland, Hillyer and Co.?

A. Well, I do not remember positively, but my impression is that he was trustee in the trust that was given by Kilbourn to Young.

1422 Q. That was for square 156?

A. That was for the deferred notes on square 156. I think he was one of the trustees in that.

1423 Q. Do you remember the amount of the deferred payments?

A. $52,000.

1424 Q. Yesterday, during the progress of the examination, I asked you whether you could state the date when you sent or caused to be sent to Sunderland and Hillyer or either of them an account current showing the charge for the care and management of the property. Since that time have you any further information on that subject, so as to fix the time when you first acquainted Sunderland and Hillyer with the fact that the firm had made this charge for care and management of this property?

1419 A. I have.

1425 Q. Will you state what it is?

A. I stated yesterday that in looking over these exhibits, which are accounts current of Sunderland and Hillyer and Thos. Sunderland, that there was another paper that should be with them, and I have since found that paper. I can state now positively that the account current of Sunderland and Hillyer and Thomas Sunderland with the firm of Kilbourne and Latta from June 17th, 1872, to December 30, 1876, which is an exhibit furnished by either Sunderland or Hillyer in this case, marked "Exhibit C, J. J. J.," and the account current of Sunderland and Hillyer with Kilbourn and Latta from the 26th day of June, 1872, to the 30th of December, 1876, which is an exhibit in this case, marked "Exhibit D, J. J. J.," both of which exhibits are filed in the testimony, and this paper which I have in my hand, which is a statement of account of Sunderland

and Hillyer from the 26th day of December, 1876, to the 5 day of October, 1877, were all sent to Sunderland or Hillyer, I do
1420 not remember which, with copies of the pleadings in the suit, 5919, of Kilbourne and Olmstead against Latta, and 5921, Latta *vs.* Kilbourne and Olmstead. They were sent all together. This last paper, which is the only one that has a date to it or is signed by anybody, is dated Washington, D. C., November 10,1877, and signed Kilbourne and Olmstead. That shows a balance due Sunderland and Hillyer of $2,715.58.

1426 Q. The paper you sent probably was the bill and not the pleadings. The pleadings include the bills and answers.

A. I sent copies of the bills and answers in both those suits, together with these three accounts current. I stated yesterday that I was under the impression that that was a fact, and, to refresh my memory, I looked over these exhibits and found this paper, which I remembered distinctly to have seen somewhere. Before I did not find the exhibit, and I stated yesterday that I was unable to say in regard to it. I have since found this paper and am able to state as I have.

1421 1427 Q. That paper was sent with whatever papers were connected with these suits—you forwarded them to these men?

A. Yes, sir; and it was shortly after the suits were commenced. My recollection is that General Jeffries sent these papers to Mr. Hillyer; but I am not positive about that—sent all these papers to him. I do not think Mr. Kilbourne and I wrote anything about it. As I said in my direct examination and cross-examination, it was the intention and the subject of considerable conversation between Mr. Kilbourne and myself as to what course we would pursue in regard to Sunderland and Hillyer. We agreed between ourselves that the probabilities were that Mr. Latta would write Sunderland and Hillyer his version of our troubles, and, instead of writing to them or in any way trying to influence them, we would send them a history of the whole thing and let them act for themselves.

1428 Q. And with that history you sent this account?

1422 A. This is the history. The history was the pleadings in the suit and these accounts current. I know they were sent to them.

1429 Q. What does that account current show? Where does it begin and where does it leave off?

A. The account current of Thomas Sunderland begins with his purchase and ends with the dissolution of the firm of Kilbourne and Latta, showing the balance due them at that time.

1430 Q. You are alluding to the account current which is in that volume?

A. The account of Sunderland and Hillyer begins June 26, 1872, and ends on the dissolution of the firm, showing a balance of about $3,000 due them. The account of Kilbourne and Olmstead commences with the balances due on the 26th day of December, 1876, and it states: "By amount due from Kilbourne and Latta, assumed by Kilbourne and Olmstead, $18,126.84," and gives a correct ac-

count of what was done from that time until the 10th day of November, when these suits were filed, showing a balance still due Sunderland and Hillyer of $2,715.58.

1423 Mr. TOTTEN: That account current is now placed in evidence.

(The paper is hereto annexed and marked "Exhibit J. F. O. No. 25.")

1431 Q. In whose handwriting is that account current?

A. It was made by me; it is in my handwriting, as it was an account current of Thomas Sunderland.

1432 Q. When was it made?

A. Made and signed on the 10th day of November, 1877.

1433 Q. Did you sign it?

A. I did; the firm name of Kilbourne and Olmstead.

1434 Q. What did you do then?

A. It was sent to Sunderland and Hillyer with these other accounts current.

1435 Q. That account current was not introduced in evidence by Mr. Sunderland when the direct testimony was taken in this case. Do you know why?

A. I do not; he had it.

1436 Q. Well, how do you know that?

1424 A. I know it from the fact that one time last summer he was here during the taking of some depositions, and with this package of papers he left that.

1437 Q. That package of papers which you hold in your hand now?

A. Yes, sir.

1438 Q. Where did he leave it?

A. He left it among a large package of papers which related to the Mayall Underground Telegraph Company. He came back here after that paper afterwards, and I looked on the desk for the paper and did not see it, and in looking over these papers some two months ago I found this bundle of papers. I took them out and put them in my safe.

1439 Q. How do you know Sunderland left them here?

A. I cannot swear positively that he left them here, because I did not see him; but other papers are in his handwriting—a copy of the bill and copy of a letter to Mr. Latta, some memoranda in his handwriting, and some accounts I had rendered to him subsequently.

1440 Q. What accounts that you had rendered him?

A. In regard to revision of assessments.

1425 1441 Q. Where are they?

A. They are all here.

1442 Q. Let us see the accounts you rendered to him.

A. There are several.

1443 Q. I mean the one in relation to the assessment of values.

A. It is not in regard to assessment of values, it is in regard to revision of assessments—special assessments under this ten per cent. contract I had with them. There is also a memorandum in the

handwriting of Charles A. Eldredge, showing property purchased by the Real Estate Association. There is an estimate of John O. Evans and Kilbourne and myself, made on the 22d day of June, 1878, which has been referred to by Mr. Sunderland. That is also here.

1444 Q. Give that in evidence. Look at this paper and state what it is.

A. This is an estimate by Kilbourne and myself of the value of the property of Sunderland and Hillyer, before they were to make a division between ourselves.

1445 Q. Has that been alluded to in the testimony?

1426 A. It has.

1446 Q. By whom?

A. By Mr. Sunderland.

1447 Q. When was that sent to him?

A. That was given to him on the 22d day of June, 1878, when they were here, as was this estimate of Mr. Evans at the same time. These papers were all together.

(The papers were offered in evidence and are hereto annexed, marked, respectively, Exhibit "J. F. O. No. 26" and "J. F. O. No. 27.")

1427 1448 Q. Have you any other memoranda or papers by which you can throw light on this question touching the final account?

A. I have a scrap that I found among some retained papers of the Sunderland and Hillyer business, taking up these balance- as shown by these three accounts current, and showing a balance of $18,125.84. That account was made, showing that there was due Sunderland and Hillyer $3,057.11. There was due to Thomas Sunderland $16,257.23, and C. J. Hillyer owed $1,183.50.

1449 Q. In whose handwriting is that memorandum you have?

A. It is in mine.

(Paper is hereto attached and marked "Exhibit J. F. O. No. 28.")

1450 Q. Was that memorandum made at the time you made the last account of November 10th?

A. I cannot say about that, but I presume it was, for there were a great many figures made at that time in this account. There is some little discrepancy of forty some dollars that is shown by Mr. Bull in a marginal lines of the account current and which is

1428 shown on this scrap of paper. There is a difference of $5.00. It seems in taking the three together it is $18,125.84, and in taking the three segregated it is $18,130.84. There is an explanation in the accounts current of these little differences.

1451 Q. Have you any other account current which you think will throw light on this subject?

A. In my testimony yesterday and in both my direct and cross examination I stated that in regard to this receipt for $2,715.58, when I first talked to Mr. Sunderland about it, I stated that I made up the account with Sunderland and Hillyer and Kilbourne and Latta, taking up the balance that was due at the time of the disso-

lution, $18,000 and odd, carrying it through and shewing what had been done with that. I called on Mr. Curtis, the commissioner, for that. I told him that it was written diagonally across the paper. I found that he did not have it. I had it myself. I stated that that paper was the first I presented to Mr. Sunderland to make the receipt for $2,715, and that he took
that paper home with him and brought it back the next
1429 morning with some objections. Those objections were these:
He said this paper took up the balance of the account of Kilbourne and Latta and settled it here, and if he signed this paper, which says, "We admit the correctness of the foregoing statement of account and release James M. Latta from all liability to us or either of us for the sum of $2,715.58"—he says if I sign that Mr. Latta could use it as a bar against him in their proceeding, it being in connection with the accounts current which they had receipted in full, and consequently he did not wish to sign that, and then signed a receipt which is already in for the $2,700.

(Paper hereto attached, marked Exhibit J. F. O. No. 29.)

At this point the examination of Mr. Olmstead was discontinued, and Mr. Kilbourne was put upon the stand as a witness for defendants.

WM. F. S. CURTIS, *Examiner.*

1430 WASHINGTON, D. C., *Oct.* 18, 1882.

Met pursuant to adjournment.

Present: Messrs. Hillyer and Ralston, for the plaintiffs; Messrs. Totten and Wilson, for the defendants.

Recross-examination of J. F. OLMSTEAD by Mr. HILLYER:

1452 Q. You stated on the last examination that you had rendered an account to Sunderland and Hillyer in respect to the reversion of the several assessment improvements. Will you please produce it? I want to see it.

A. If I said anything about that I do not remember. What I said was that, among the papers I found belonging to Mr. Sunderland, I found this statement of the account of Sunderland and Hillyer with Kilbourn and Olmstead, taking up the balance that was due them at the time of the dissolution of the firm of Kilbourn
and Latta and bringing it down to show this balance of
1431 $2,700.00, which I testified was sent to them some time in the
fall of 1877 to indentify. That I found among some papers that belonged to Mr. Sunderland, showing my account with Sunderland and Hillyer under my contract with them for the revision of assessments.

1453 Q. Those are the accounts I want to see.

A. Here are the papers that were with this statement. There are various papers there, some belonging to Sunderland and Hillyer, some of which I furnished to Mr. Sunderland, and some of which are private papers belonging to him. I hand you, at the request of

Mr. Sunderland, the papers that were in the package, excepting this one, which I put in evidence in my last examination.

1454 Q. Have you an account showing the amount of reduction of the special improvement tax which I had made out in the form of a bill to Sunderland and Hillyer on Sunderland?

A. I do not know whether I have one. I may have a duplicate. I am quite apt to keep copies of all papers I give out.

1432 1455 Q. I wish you would see. I want that paper. Your testimony states—it may erroneously state—that you had that account among these papers.

A. I do not think my testimony stated that I had that account.

1456 Q. If you have that account I would like to see it. Can you put your hand on it without considerable trouble?

A. I will see if I have the account. (After a search and producing some papers:) What is that you want now?

1457 Q. The bill for special assessments under your contract with us—the ten per cent. contract—the bill that was rendered to Sunderland and Hillyer. Do you find that?

A. I have some duplicate statements of account of the revision of assessments.

1458 Q. I will look and see if that will do, if you will allow me to look at it.

A. They have not been referred to in my examination, that I know of. I do not remember to have stated anything about them, because I do not know that they have been called for at all, and I do not know that I have ever rendered these statements. They are memoranda of the revisions under that contract.

1433 1459 Q. That is precisely what I want to see. (After examining papers:) This shows correctly the revision of the amounts, &c.?

A. It does not.

1460 Q. Have you any paper which does?

A. I have not.

1461 Q. Does this paper show the drawback on square 93?

A. It does not. I do not know about that; you can look and see. This account does show certain drawbacks that were received on account of square 93. Those drawbacks were received on account of the assessments which were levied against the various fronts of square 93, but it does not show the drawback to which you allude, as I suppose, of nine hundred and some dollars—I have forgotten exactly what it was. That was a drawback or cancellation of the assessments on Q street, and, if I am not mistaken, it was a settlement made with Col. Hillyer outside of this contract.

1462 Q. Was there any drawback obtained by you in some form on 21st street, square 93?

A. All the drawbacks that I received on square 93 are stated
1434 in this schedule, except the nine hundred and some odd dollars which I settled with you.

1463 Q. Was there any drawback received on account of taking up the sidewalks on 21st street by you?

A. I do not remember.

1464 Q. Have you any papers that will show?

A. Twenty what?

1465 Q. Twenty-first street, between square 93 and square 66.

A. I do not think there was any drawback received for sidewalks taken up on 21st street. It is seven years ago, and I cannot carry it in my mind.

1466 Q. Were drawbacks received for somewhere else—taking up sidewalks on the square?

A. The drawback which I received, and for which I settled with you, was received for the Q-street front. I think I stated in my examination that the sidewalk and curbstone on Q street I had taken up from the street and piled on the square inside of the building line, and it was taken from that square in the night and carried to the property yard of the District of Columbia; and I made a
1435 memorandum in regard to that, and when the proper time came I made a claim for it, and I got that much drawback for your credit on account of that square.

1467 Q. In the papers which you exhibit here with the statement does that drawback appear?

A. It does not.

1468 Q. Have you any papers in your hands which do show it?

A. I think I have not.

1469 Q. Are you able, from any data which you have, to make out a statement which will show correctly the amount of that drawback?

A. I do not know whether I have or not.

1470 Q. Will you examine and see?

A. The records of the special assessments office will show that. I am not positive whether the drawback was received in the form of a certificate or whether it was credited on account of assessments against that square. I think that you have the papers in regard to it. That is now my recollection, that I handed them to you. I know that it was gotten some time after your settlement with Sunderland.

1436 1471 Q. I think I understand you to say that you had nothing to do with that drawback on 21st street?

A. I have not stated that.

1472 Q. Did you?

A. I did.

1473 Q. What was it? I want to get what you know about the drawback on 21st street.

A. I am in error about that; it is 20th street. I do not know whether there was any drawback on 21st street. If I have said 21st street in any of my testimony heretofore, I may be mistaken about it.

1474 Q. Twenty-first street is between 66 and 93?

A. That is what occurred to me just now.

1475 Q. Do you know anything about the drawbacks on that street?

A. I know nothing about them. I do not remember.

1476 Q. In what is the statement imperfect which you present here in respect of the revision of special improvement tax for Sunderland and Hillyer under this contract?

A. I have not presented any statement.

1477 Q. You say you had a statement there?

1437 A. I say I have memoranda here and schedule of certain revisions of assessments under that contract. It is an office memorandum.

1478 Q. I asked you in what that fails to give a complete history of your acts in respect to that revision.

A. Indeed, I am unable to state. It is a memorandum which I had kept in my office. I have examined it. It is quite a considerable document, and it refers to assessments, but to what extent I am unable to state. Do you require me to go over the entire assessment accounts with their property, which has too long since been settled to tell anything about it?

1479 Q. Have you ever had in your possession a bill which was rendered to Sunderland and Hillyer by you on account of those special improvement taxes?

A. I must have had one if I rendered one.

1480 Q. I say, have you ever had that copy of the bill which was rendered to them or either of them on account of special improvements?

A. I do not understand your question as far as you have stated it. If I rendered them an account I must have had it.

1481 Q. Since it was given to Sunderland and Hillyer?

A. I do not remember to have had it.

1438 1482 Q. In the account which you have referred to, the account Exhibit "C," being an account which you rendered in November to Sunderland and Hillyer, and which appears in the testimony of the plaintiffs—an account of the transactions of the firm of Kilbourn and Latta—there is an item of a charge of a thousand dollars commission on the sale of the house formerly owned by Mr. Stewart. When was that charge made on your books?

—. ——.

By Mr. TOTTEN:

1483 Q. Have you Exhibit "C" before you?

A. Yes, sir.

1484 Q. What is it?

A. It is the account current of Thomas Sunderland with Kilbourn and Latta from June 17, 1872, to December 30, 1876, which is one of the papers sent to Sunderland and Hillyer. In answer to Mr. Hillyer's question I wish to say that I do not think I have testified either in direct or cross examination that these accounts current were sent in November, 1877. I have been quite positive that they were sent some time that fall or winter, but when I did not know positively until the letters of Gen. Jeffries to them

1439 were introduced yesterday, which letters fully identify the papers as having been sent on the 26th November, 1877.

1485 Q. In this account, Exhibit "C?"

A. Now I am referring to Exhibit "C." On the 29th of Novem-

ber, 1875, appears the charge of commission on sale of Stewart house.

By Mr. HILLYER:

1486 Q. Is that the date it bears in your books?

A. I do not know. I will look and see. (After examining books:) On the journal of Kilbourn and Latta, on page 419, December 31, 1873, appears this entry:

"William M. Stewart, to commission account for making loan of $30,000 of George Taylor	$600 00
"For negotiation of the sale of house	1,000 00
	$1,600 00"

On page 4 of Kilbourn and Latta's journal, under date of 27th of November, 1875, appears this entry:

"Thomas Sunderland to William M. Stewart, for commission on the loan of George Taylor	600 00
"For commission on the sale of William M. Stewart's house	1,000 00
	1,600 00"

The first entry charges Stewart with the commission for
1440 negotiation of the loan of thirty thousand dollars on his property, square 113.

1487 Q. Is it not?

A. Yes, sir; 113 is where his house is now.

A. And also charges a thousand dollars commission on the sale of the house that Fleming took in part payment for building the house on square 113; and there I wish to correct Mr. Latta in his deposition. I do not know how he got wrong about that. He said it was not the sale of the Stewart house, but the Schenk house. We had sold one of them to Schenck and one to Stewart originally, and there is where he made the mistake. This last entry charges Sunderland and credits Stewart with the amount of that commission. That was done under some arrangement. It was done by Mr. Latta's direction, if I remember rightly, and was done under some arrangement with Mr. Sunderland in regard to having those commissions charged to his account. There was some talk or something—I have forgotten what it was—about Stewart building that
house up there and there being some consideration to Sun-
1441 derland and Hillyer in regard to the enhancement of the valuation of their property, and so these commissions were credited to Stewart and charged up to Sunderland. That six hundred dollars was charged to Sunderland's account by his direction, but the thousand dollars I cannot remember anything about except in a general way.

1488 Q. Did either member of the firm, to your knowledge, have

any communication with Mr. Sunderland, in respect to that thousand-dollar item, between December, 1873, and the time when that charge was made?

A. I do not know, except what I have stated.

1489 Q. Have you not testified that you had no communication with Mr. Sunderland by way of letter from him, and that you did not see him between those dates?

A. I think I have.

1490 Q. Then you did not get this authority from Mr. Sunderland between these dates, did you?

A. I have stated that my whole testimony in regard to these items, with the exception of the six-hundred-dollar charge, is
1442 entirely from general recollection. I know that there was conversation with the members of the firm in regard to our commission on these transactions of this character. The building of that house was considerably of an outlay to Mr. Stewart and benefited him in no way except as far as that individual property was concerned, and, like the British minister's house, his was a benefit to the property of Sunderland and Hillyer. There was some conversation with Mr. Sunderland, and I am not positive that there was not with Mr. Hillyer, as to whether in equity they should not help Stewart out to that extent. What it was I do not remember. It could not have been between December, 1873, and the time the change was made, but it may have been before that time.

1491 Q. What reason was there for making the change? You say you had not seen Mr. Sunderland nor heard from him about it. What was the reason for making the change from Mr. Stewart to Mr. Sunderland?

A. I testified it was in consequence of some understanding with either Sunderland or you or both of you; I do not know
1443 which.

1492 Q. Did you say you ever had any talk with Mr. Hillyer about that or did any member of your firm?

A. I do not know whether I ever had any talk with Mr. Sunderland.

1493 Q. I want to know why you made that charge to Sunderland after making it to Stewart.

A. I have stated what I know about it. There is no doubt in my mind that it was done by virtue of an understanding with Sunderland and Hillyer or one of them. There was no object in charging it to Mr. Sunderland after charging it to Mr. Stewart. Mr. Stewart was perfectly good for the charge.

1494 Q. Did not Mr. Stewart tell you he would not pay it?

A. No, sir.

1495 Q. Did he make objection to the bill?

A. Never to me.

1496 Q. Did he ever to any member of your firm, to your knowledge?

A. Not to my knowledge.

1497 Q. You never knew, then, of that bill being presented to Mr. Stewart?

A. One moment—I think I do remember the bill having
1444 been presented to Mr. Stewart and Mr. Stewart making some such suggestion, that I have stated, in regar l to the benefit of that house to the property of Sunderland and Hillyer. I am not very distinct on that. I do not know that he did say it, but my impression is that he did.

1498 Q. Do you mean by that that Mr. Stewart suggested that Sunderland ought to pay this bill?

A. No, I would not like to say that, and yet I am not prepared to say that he did not. There was something said about it, I know.

1499 Q. Did not Mr. Stewart refuse to pay that bill, and say at the time the reason was because you had nothing to do with the sale of the property?

A. No, sir; he never said anything of that kind to me nor did I ever hear of it. In fact, it was not true, and I do not think he would say it.

1500 Q. Well, I am asking, did you ever hear any member of your firm say it? You did not hear yourself? Did you ever hear any member of your firm say that Stewart would not pay the bill?

1445 —. I never heard of his disputing the validity of the bill; never heard any member of the firm say he did. I think I was the only member of the firm who ever presented the bill to him.

1501 Q. Mr. Sunderland did not own this house, did he—the house that was sold—nor the one for which it was exchanged—the one that Mr. Fleming was building?

A. I testified how Mr. Sunderland had anything to do with it, if he ever did.

1502 Q. Do you know that Mr. Sunderland had anything to do with making that charge? I want to know whether you know and can state that Mr. Sunderland ever authorized that charge to be made?

A. I have stated all that I can in regard to it. It is simply a matter of recollection just at this moment. Until two or three days ago I never thought anything about it. My attention had never been called to it, and if when I gave my direct examination I had been asked whether we charged this amount to Mr. Sunderland for no services and in any way that the question did not refresh
1446 me I should have said no. This was eight years ago that that charge was made.

By Mr. TOTTEN:

1503 Q. Anybody make any fuss about it since?

A. I never heard anybody.

By Mr. HILLYER:

1504 Q. Did not Mr. Sunderland tell you, after these accounts were rendered, in the Arlington Hotel, at the time you have spoken of, your visit—you and Kilbourn—that that charge was simply an outrage?

A. I never heard it until you brought it up to-day—I do not mean to say that exactly; I never heard of it in that sense.

1505 Q. Can you state any reason now why you should charge it to Sunderland?

A. I have stated all the reasons that are now in my mind.

1506 Q. You have not stated any, in my judgment, and I want to know whether you can state any.

A. I have stated all that I can in regard to it. I will add, too, that I do not know any reason why that charge should have been made to Mr. Sunderland rather than to Sunderland and Hill-
1447 yer, unless it was, as I have stated, that, in conformity with or in pursuance of some understanding between Sunderland and Hillyer and the firm of Kilbourn and Latta, that transfer was never made from Mr. Stewart to Sunderland without its being an agreement in some shape or other between the parties.

1507 Q. Do you say you know of such an agreement?

A. I do not.

1508 Q. Have you any recollection of it, as to how the agreement was made—either time or place?

A. I have not.

1509 Q. Did you ever have a word of conversation with Mr. Hillyer about it?

A. I do not know whether I did or not.

1510 Q. Do you think you did?

A. I cannot state. It is asking me to go back to events that occurred eight years ago.

1511 Q. In what had Latta treated Sunderland and Hillyer, or either of them, badly, so as to make them hostile to him, prior to the discovery by them in this account of the charge for care and management?

Mr. WILSON: I object to that.

1448 The WITNESS: Do you want me to give the first intimation that I had that there was any hostility between you and Latta? I will give it to you in plain words, if you do.

(By Mr. HILLYER:)

1512 Q. Answer my question.

A. All right. The first intimation that I had that there was any hostility between Sunderland and Hillyer and Mr. Latta was some little time after they came here—when this question of the account came up—their talking to us about the charge for the care and management of their property. Mr. Hillyer said to me that so far as Kilbourn and I were concerned he did not care a damn about the charge, but so far as that son of a bitch Latta was concerned he proposed to go for him.

1513 Q. Now, will you answer the question which I have asked and which will be re-read to you by the stenographer.

The stenographer read as follows: "In what had Latta treated Sunderland, Hillyer, or either of them, badly, so as to make them

hostile to him, prior to the discovery by them in this account
1449 of the charge for care and management?"

A. I did not know that he did treat them badly in any way. I know so far as I was concerned and, I think, so far as Mr. Kilbourn was concerned, in view of our troubles with Mr. Latta, we proposed and did avoid meeting Sunderland and Hillyer or in any way seeming to court their business or their friendship. We proposed to do from the outset what we did when we sent those papers to them—acquaint them with every fact, everything connected with their property and our management of it, and let them be free to act for themselves as they pleased. We wanted the care of their property and the handling of it, and we concluded that that was the square and straight way to do it. If they had any confidence in us they would give it to us, and if they did not they would probably predicate their action on the papers and accounts we rendered, and we presumed at that time also that Mr. Latta would probably endeavor to win
their favor or to appear to be correct and right in his trans-
1450 actions with Kilbourn and myself.

1514 Q. You stated in your last examination that a certain paper which you had found had refreshed your memory as to the time when you sent the account of the transactions of the firm of Kilbourn and Latta to Sunderland and Hillyer, or one of them.

A. Yes, sir.

1515 Q. What paper was that?

A. It is the account current of Kilbourn and Olmstead with Sunderland and Hillyer, commencing, as I have stated from the first, with a balance that was in the hands of Kilbourn and Latta at the time of the dissolution, belonging to Sunderland and Hillyer and accounting for its disbursement, showing, as we stated in our answer to Latta's bill, that we owed the firm of Sunderland and Hillyer $2,715.58. I stated in my direct examination when I examined the exhibits furnished by Mr. Sunderland that there was a paper missing. In my examination I stated the same thing, or that
1451 my recollection was that those papers were sent to Sunderland and Hillyer late in the fall of 1877, but I can now be positive. I am able to identify this paper, first, by the paper itself; by the paper itself the identification in my mind was complete; and then by the letter of General Jeffries, in which he says at a certain place, where he has placed an asterisk in this account, there was a certain balance due, and from that the account is shown to be twenty-
hundred and odd dollars.

1452 Q. Will you produce the paper?

A. It has already been produced in evidence; it is "J. F. O. No. 25." You brought the paper to me this afternoon. That is the first time I have seen it since the other day.

Q. The paper to which you refer, then, is this exhibit. This exhibit does not contain the account of the firm of Kilbourn & Latta—this paper that you say refreshes your memory—does it?

A. I stated in my examination the other day that the copies of the pleadings in the two suits of Kilbourn & Latta were sent to Sunderland & Hillyer; that there was an account current of Thomas

Sunderland with Kilbourn & Latta, and an account current of Sunderland & Hillyer with Kilbourn and Latta, and, I thought, an account current of Sunderland and Hillyer with Kilbourn & Olmstead. I also introduced there a little paper scrap on which were the balances of these two accounts—Sunderland & Hillyer and Thomas Sunderland with Kilbourn & Latta—showing a balance in
1453 the hands of Kilbourn & Olmstead, after the dissolution, of $18,125.84, and the account current with Sunderland & Hillyer and Kilbourn & Olmstead takes up that balance and disposes of it. The accounts current of Sunderland & Hillyer and Thomas Sunderland with Kilbourn & Latta show the charge of sixteen thousand dollars and odd in one case and five thousand dollars in another case for the care and management of property.

Q. Will you answer the question which I asked and which will be re-read to you?

The stenographer read as follows:

"The paper to which you refer, then, is this exhibit. This exhibit does not contain the account of the firm of Kilbourn & Latta—this paper that you say refreshes your memory—does it?"

A. For what purpose the question is asked I do not know. There is no way to answer it except to take up the whole account, the whole history, which was sent to Sunderland & Hillyer, and set it forth as I attempted to do in my examination, and have in answer to this question.

1454 Q. You decline, then, I understand, to answer this question other than you have?

A. That account taken by itself is a simple account of the balance that was in the hands of Kilbourn & Olmstead after the dissolution and shows its disposition.

By Mr. TOTTEN:

Q. What account?

A. It is an account of Sunderland & Hillyer with Kilbourn & Olmstead. It is the account that was put in when these other two exhibits were.

Q. When was it put in and what is it marked?

A. It was put in day before yesterday by me. It is a paper that I found among the papers left in this office by Thomas Sunderland.

Q. What is it marked?

A. "J. F. O. No. 25."

By Mr. HILLYER:

Q. Will you now state in what way this paper refreshes your memory as to the fact that you also sent an account of the transactions of Kilbourn & Latta at the same time?

1455 A. For one reason, that that paper in itself amounts to nothing. The three papers must go together in order to be complete.

Q. The paper which you have offered here and which is intro-

duced as an exhibit, marked "J. F. O. No. 25," you found among your papers, if I understand you?

A. No; I do not think you understood me so. I said that I found it among Mr. Sunderland's papers—papers that he left here one day and came back for. I did not know that that was this paper.

Q. Did you in all instances keep copies of all papers that you sent Sunderland & Hillyer?

A. I do not think we did. We did up to a certain time. I think perhaps as long as Mr. Bull was with us as our clerk we kept copies of papers. After that the labor of book-keeping devolved upon me and I did as little of it as possible.

Q. You do not have, then, among your papers a copy of these accounts which were sent to Sunderland & Hillyer, as you say? I speak of the accounts of the firm of Kilbourn & Latta.

1456 A. I have no copies of them. I do not know whether I did or did not have. I have not now.

Q. After Sunderland & Hillyer came here, in June, 1878, did you make out or procure to be made out an account of the firm of Kilbourn & Latta to be furnished to Sunderland & Hillyer?

A. No, sir.

Q. Did you deliver to them an account after they came here?

A. No, sir.

Q. Was it delivered by any member of the firm of Kilbourn & Latta, to your knowledge—an account of the transactions of that firm and Sunderland & Hillyer in 1878?

A. They were not in existence at that time—Kilbourn & Olmstead. I do not know of any member of the firm delivering the accounts. I will not say positively that we did not deliver them, or something of that kind, but I do not remember now. I do not think we did.

Q. To the best of your judgment, then, you never delivered to Sunderland & Hillyer or either of them a full account cur-

1457 rent of the transactions of Sunderland & Hillyer from the year 1872 up to the time of the dissolution of the firm?

A. That is my recollection. It may be if they have them they will probably produce them.

Q. If you had previously furnished them a full account current of the transactions of that firm from 1872 up to 1876, is it likely—is it probable—that you would have gone to the trouble of giving them another account in July, 1878?

A. I do not know. They were careless gentlemen, and they lost a great many papers or mislaid them. It is barely possible that they either lost or that they had these accounts and others were made up. I do not know anything about them.

Q. In whose handwriting are accounts "C" and "D"—the Exhibits "C" and "D"—of the plaintiffs' exhibit?

A. Exhibit "C" is in my handwriting and Exhibit "D" is in the handwriting of John Bull.

Q. Was John Bull in your employ, 1877?

A. No, sir.

Q. Did you employ him specially to make out any account in 1877?

A. Several.

1458 Q. Is it your impression or belief that you employed him in 1877 to make out this account?

A. It is.

Q. As late as November, 1877, you think you employed him to make out one of these accounts?

A. I think that we employed him quite often to make out accounts. I know that the account was made out by him. It is his handwriting.

Q. You think you can testify to the best of your belief that it was made by him in the year 1877?

A. I do.

Q. These accounts, if I understand you now, were sent with the pleadings by Mr. Jeffries, to the best of your knowledge?

A. I have said from the first that it was my impression that they were accounts that were sent with the pleadings—all of these accounts—and the letters of Mr. Jeffries fully confirm me in that belief. These letters speak of these accounts and speak of the balances due on them. One account says: "To balance, $5,200;" and

1459 then goes on anew: "For disbursements," and leaves the account twenty-seven hundred and odd dollars. There is no way under heaven in which that balance could have been shown to the mind of a child ten years old, except by sending all the accounts, and there is no more doubt in my mind that those accounts were sent at that time then there is of my existence, and I do not think there is any doubt of that.

Q. Why did Kilbourn & Latta, who, as you say, were uniformly agents of sellers of property, advise or consent to the non-recording of deeds in order that prices might be kept down for buyers?

A. The non-recording of deeds was, in the first instance, a matter of agreement or understanding between the firm of Kilbourn & Latta and certain members of what is known as the "Real Estate Association," who were large buyers, and in the instance of Sunderland & Hillyer it was a matter of agreement and understanding between them and the firm of Kilbourn & Latta. The firm of

1460 Kilbourn & Latta were quite prominent before the people as speculators in real estate, and it would require a good deal of *finesse* to handle a piece of property. If they were interested or manifested much interest in it the sellers were naturally a little shy about it and thought there must be something in it, and, without any reason, be stiff in their prices beyond what the market was of itself. The non-recording of the deed was a matter of mutual benefit both to buyers and sellers.

Q. Was the firm of Kilbourn & Latta agents for the Real Estate Association in the purchase of property that that association bought?

A. The Real Estate Association is not, that I know of, involved in this suit, and I do not propose to testify in regard to that unless the court says I shall.

Q. You refuse to answer the question, then, I understand you?
A. I do.
Q. On the purchase by the Real Estate Association of square 156, concerning which you have testified, did the firm of
1461 Kilbourn & Latta charge commissions to either the parties, and, if so, to which?

A. So far as square 156 is concerned in relation to Sunderland & Hillyer, I will testify anything and everything in regard to it. Prior to their having anything to do with it I decline to say anything about it. Not that I have any hesitancy about it or reason for not doing it, but, for one reason, I do not think it necessary to lumber up this record to three or four thousand pages as we have, and, secondly, because I do not think it is in this case. We have gone into a very large amount of matter that does not belong in this case.

Q. Have you been advised by your attorneys or either of them not to answer this question or questions of that character?
A. I have not.

Mr. TOTTEN: The attorneys approve of his notion, however.

By Mr. HILLYER:

Q. Did Brian pay you a commission in your transactions with him?

A. I do not know who Brian is; and if I did I should de-
1462 cline to answer unless it pertained to your business.

Q. Did Judge MacArthur know the profit that was made on square 156?

Mr. WILSON: I object to that.

The WITNESS: As that is not pertinent to this in any shape, I shall not answer. I am not here for giving the business of Judge MacArthur with Kilbourn & Latta any more than I would be in a suit with Judge MacArthur to give the business of Kilbourn & Latta with you.

Mr. TOTTEN: I object to the question because I do not believe that Mr. Olmstead knows what Judge MacArthur knows.

By Mr. HILLYER:

Q. Did you inform Judge MacArthur prior to the time you purchased the interest in the Real Estate Association, or did you know of his being informed by any member of the firm, of the fact that square 156 had been sold and of the profit which had been realized upon it?

Mr. TOTTEN: I object to that.

The WITNESS: I decline to state anything about the Real Estate Association or its members in any way.

1463 By Mr. HILLYER:

Q. You know the fact, do you not, that it is a part of the complaint part of the bill that you were charged with having fraudulently conducted this business?

A. I do not know that it is a part of this bill and do not see how it is possible that it could be, unless some of the supposed members of that Real Estate Association have employed you to bring it in.

Q. Did you swear to an answer in reference to square 156, in this case, in which these facts were set up—the facts that were alleged by the plaintiffs?

(Objected to because the answer speaks for itself.)

(By Mr. HILLYER:)

Q. I wish to know what you mean by saying that it is not in this bill, whether it is charged in this bill that square 156 was fraudulently sold to the plaintiffs.

Mr. TOTTEN: I object to the question because the bill speaks for itself, and because Mr. Olmstead is not supposed to know technically what is in the bill or charged in the bill nor in the amendment to the bill.

1464 The WITNESS: There are lots of foolish things in this bill and in the amendment. For all I know, that may be put in, but I don't know what that has to do with Sunderland & Hillyer, if it is in there, unless they are the guardians of the Real Estate Association.

By Mr. HILLYER:

Q. In March, 1874, you wrote to Sunderland & Hillyer that the sewer tax must be paid. When did you change your mind in regard to that?

Mr. TOTTEN: I object to that question unless that letter is produced.

The WITNESS: I do not remember to have written any. Possibly I might have done it. If I did, I don't know when we changed our minds in regard to it.

By Mr. HILLYER:

Q. When did the law pass through Congress relieving the people of Washington from the sewer tax?

Mr. TOTTEN: I object to the question and request Mr. Olmstead not to answer. Public laws are public laws and speak for themselves.

The WITNESS: I don't know.

1465 Redirect examination by Mr. TOTTEN:

Q. Were you present yesterday when Mr. Clagett was re-examined by Mr. Hillyer, one of the plaintiffs in this case, and asked if the firm of Kilbourn & Latta were not opposing the Board of Public Works; and, if you were, I want to know whether the firm of Kilbourn & Latta or any one of them ever did anything in relation to that controversy, which went on in the early part of 1874, which, in their judgment, was not for the benefit of Sunderland & Hillyer and

for the benefit of the real estate market in the northwestern part of the city?

A. No, sir; we did not. Mr. Clagett was mistaken in his answer to that question, that the firm of Kilbourn & Latta were opposing the repeal of that tax. I suppose he was led into that from the general impression that Kilbourn and Latta favored the Board of Public Works.

Q. I think Mr. Clagett said he did not say it was a fact,
1466 but he said it was understood by the community that Kilbourn & Latta were against that committee and in favor of the Board of Public Works. I think that is the farthest he went.

A. That was, to some extent, the condition of things; they were opposed to that committee to some extent; that committee did some good and a great deal of hurt.

Q. Did the firm of Kilbourn & Latta do anything during that controversy which, in their judgment, was against the interest of real estate owners in the northwestern part of the city, where the property of Sunderland & Hillyer and Stewart was located?

A. They did not; on the contrary, I think that the firm of Kilbourn & Latta did more to advance the real estate business and the general interest of the city of Washington than all the others put together.

Q. I want your opinion as to whether or not the Board of Public Works was or was not a great benefit to the city of Washington and its people.

A. I do not think that anybody will be foolish enough
1467 *enough* at this day to say that they were not.

Q. Is not the city of Washington and its people largely indebted to Governor Shepherd for its present beauty and elegance?

A. I think it is. I think the northwestern part of the city is worth to-day four hundred per cent. more than it was in 1872–'73.

Q. Was it or not a mistake of the legislative power in this country to abolish the Board of Public Works June 20, 1874? What is your opinion about that?

A. I am not prepared to say it was a mistake, because there were various things that combined to make it advisable to do it, and there were various reasons why it was detrimental to the interests of Washington to have it done; but, in the light of subsequent events, I do not know but it was a good scheme.

Q. At all events, the Board of Public Works gave to real estate the impetus which has brought it up to its present attitude of magnificence?

1468 A. I think Shepherd did that; I do not think the Board of Public Works did.

Q. It was under the power of the statute forming the Board of Public Works?

A. Yes, sir.

Q. The firm of Kilbourn & Latta was in favor of general improvements in the city of Washington, was it not?

A. Yes, sir.

Q. That is, from the time the Board of Public Works came into power up to the time it went out and afterwards?

A. Yes, sir; and a long time before the change in the form of government, during its original form of mayor and council. The plan of the Board of Public Works was gotten up in the office of Kilbourn & Latta.

Q. Which form?

A. The form of the Board of Public Works.

Q. Was the firm of Kilbourn & Latta devoted to the idea of improvements in the city of Washington?

A. Yes, sir.

Q. Did they favor the general system of uniform grade and the general improvement of the streets, paving of the streets, &c.?

1469 A. No; they did not favor the general system of uniform grade. They were rather opposed to that, but the general improvement of streets they did favor—did all they could to get as many streets improved as possible.

Q. Did the firm of Kilbourn & Latta or any one of them favor, as far as you know, any unjust or partial assessment of taxes against any piece of property in this city or District?

A. Never did.

Q. Were they or were they not always opposed to improper assessment and extravagant valuations of property?

A. I think they were always opposed to the form of assessment.

Q. What action did they take, if any, on this subject for the purpose of benefiting the tax-paying population of the District?

A. I think they were of the general opinion that the manner of making assessments was to a large extent careless and subject to criticism. They opposed that.

Q. So far as you know, as a matter of justice and equity, should Sunderland pay that $1,000 charged eight years ago to him?

1470 A. I do not think there is any doubt that Sunderland & Hillyer should pay it. Why Sunderland should pay it individually I do not know.

Q. When did you first hear any complaints of that charge of $1,000?

A. I do not remember to have heard any.

Q. You have heard something recently about it?

A. It is not charged in the bill of complaint, anyhow. I have been questioned about it.

Q. Whilst Mr. Wilson and I were otherwise engaged in the criminal court of this District last summer there was a deposition taken, amongst a good many others, of Mr. Sunderland, in which he says it was a pure gratuity. That is the first evidence or intimation that I ever had that there was any complaint about it. Did you ever hear any complaint about it prior to that date?

A. Never. I had no knowledge of it until I saw it in the mass of testimony that was furnished.

Q. Do you know or can you state when Mr. Sunderland was made acquainted with the fact that a thousand dollars had been charged against him for that property?

1471 A. I cannot. I have stated all I know about that.

Q. Can you state whether it was a year ago or six years ago?

A. I cannot state anything further than I have.

Q. You furnished accounts to Mr. Sunderland up fully to 1873. They are hitched onto that first volume of testimony taken under the supervision of Mr. Johnson, examiner—most if not all of them?

A. I think we furnished accounts to September 6, 1873.

Q. Was that charge in there?

A. No, sir; that charge was made December, 1873. The charge was made on the books some time after the transaction was had. That rather refreshes me, too, with the idea that it was a matter to be agreed on between Sunderland, Hillyer, and Stewart as to who should pay it, for that matter, because it was not charged on the books until December, 1873, at the time we were balancing up for the year. The transaction was some time prior to that, if I remember rightly.

Q. The change must have been made known to him prior to November 10, 1877?

1472 A. I would not like to say that it is an absolute fact that it had been transferred from Stewart to Sunderland until the accounts were rendered to him.

Q. When was that?

A. The fall of 1877.

Q. Do you mean November 10, 1877?

A. By Gen. Jeffries' letter it was Nov. 26.

Q. Gen. Jeffries' letter was dated November 26, 1877, and the account inclosed in that was November 10, 1877?

A. Yes, sir.

Q. Sunderland must have had that account prior to the date of the receipt of Jeffries' letter?

A. No, sir; it is in that account.

Q. Is it in that account?

A. Yes, sir.

Q. The charge of a thousand dollars?

A. Yes, sir.

Q. Show it to me.

A. It is in there, I know; I saw it there. There is not an account nor has there been a charge connected with the transaction of Sunderland & Hillyer's business which is in any way a subject of criticism, and I do not believe that they thought so at the time.

1473 (The counsel for the defendants here produced Mr. Hallet Kilbourn for cross-examination; but Mr. Kilbourn was not cross-examined for the reason, as announced by counsel for the plaintiffs, that the testimony as reported stenographically was not written out and they had not an opportunity of reading it over.)

Adjourned until to-morrow at 3.30 p. m.

1474 OCTOBER 23D, 1882.

J. F. OLMSTEAD recalled.

By Mr. TOTTEN:

Q. How many separate tracts or lots of land were in the care of the firm of Kilbourn & Latta, during the time mentioned in these proceedings, for Sunderland & Hillyer?

A. Do you mean separate lots having to look after?

Q. I mean different lots of ground, according to subdivisions and divisions of square- in this city?

A. I think somewhere about 375—close to that.

Q. According to the system of taxation prevailing in this city then and now, were the assessments and levies made according to lots or according to squares?

A. According to lots.

Q. According to lots as originally subdivided or according to subdivisions?

A. Both. In making the collection of taxes to know whether the taxes were correct it was necessary to examine each particular
1475 lot to see if there were not more square feet charged than was in the lot and to see if the additions were right. Thousands of mistakes in transposing their accounts and figures occurred. They had cheap labor done there, and consequently it was very carelessly done.

The defendants here announced that they were through with their testimony with the exception of the examination of Mr. Kilbourn in case the court directed Mr. Kilbourn to answer the questions that were hereinbefore objected to by counsel for the defendants.

WM. T. S. CURTIS, *Examiner.*

1476 WASHINGTON, D. C., *November* 6, 1882.

Met pursuant to adjournment.

Present: Curtis J. Hillyer, Esq., for the plaintiffs; Enoch Totten, Esq., for the defendants.

1477 J. F. OLMSTEAD, a witness on behalf of the defendants, recalled for examination by the plaintiffs' counsel:

By Mr. HILLYER:

Q. In looking over the exhibit which is filed, showing the account of Hallet Kilbourn, trustee, I find that referenances are made to certain folios which I suppose to be pages of the journal; is that correct?

A. Yes, sir.

Q. Will you produce the journals containing the entries from which this ledger account is made, commencing with Aug. 31, 1871?

A. I will, so far as it may apply to any property of Sunderland and Hillyer or anything of that kind, or anything that is in controversy. If you will designate any——

Q. My question is to have the journal produced with regard to all these entries, because I proposed to ask in regard to all of them.

A. I cannot do that, because the entries may refer to some-
1478 thing entirely between other parties and may have nothing whatever to do with this. I will produce the journal of any entries pertaining to any property connected in any way with this suit. It is not my desire to conceal anything that belongs to this suit, but it is my desire not to go rambling through a mass of entries that do not pertain to it, and to protect the interests of my patrons.

Q. What I wish is to have the journal entries produced from which the several items in this ledger account are made and copies of them taken, and I wish to know whether you decline to produce them or not?

A. Well, I can only answer that as I have—that I will produce anything and everything that is called for specifically and which pertains to this suit.

Q. I called specifically for the journal entry of August 31, referred to in the ledger account as folio 99.

A. What is the date of that?

1479 Q. August 31, 1871.

A. (After examining book.) It is very evident that you do not want that or that you certainly do not know what you are calling for, as that entry was made more than a year prior to your having any transactions with the firm; consequently it could not apply to anything connected with this suit in any way, and that is an explanation of what I said in regard to that account—that I am willing to produce any accounts that apply in the slighest degree to the matters of Sunderland and Hillyer; but I am not willing to produce at random these books to be run over, without knowing what they are, as it appears from the last question that the counsel does not know what he is asking for.

Q. It is very evident to me, in this question, that I know what I am asking, and I know for what purpose I want it, and the
1480 only thing you have to do is to say whether you will, when asked, produce it or not.

A. I must decline to produce anything that is not connected with this suit.

Q. Are you advised by your counsel not to produce these journals, since the ruling of the court, in respect to the Real Estate Association?

A. I am not advised by counsel.

Q. You take the responsibility yourself of refusing to produce that journal. I want the question put down; I want to know?

A. I take the responsibility of declining to produce anything that I have not been called upon to produce, offering, as I have, to produce anything and everything that pertains to this matter in any shape.

Q. Do you suppose you are the judge of what pertains to this matter?

Mr. TOTTEN: Do not answer that question.

Mr. HILLYER: He can answer it if he pleases; my question is there.

1481 The WITNESS: I am certainly the judge of these books and accounts, and I know what they contain. I know what pertains to this suit a great deal better than the counsel does, and I have produced a hundred things that did not pertain to it simply to gratify his curiosity.

Mr. HILLYER: That ends the examination until the opinion of the court is procured upon this question. Now, I will make out the papers for this purpose or submit it as I did before, if the counsel on the other side wish to agree to it.

Mr. TOTTEN: Counsel on the other side will agree to nothing.

JOHN F. OLMSTEAD.

Adjourned until to-morrow at four o'clock.

WM. T. S. CURTIS, *Examiner.*

1482–1484 EXHIBIT J. F. O. No. 1. W. T. S. C.

LOGAN HOUSE,
ALTOONA, PA., *May* 26, 1872.

It has occurred to me that in order to avoid conflict of interests, as far as possible, we should district the territory in which we would give each party the first option of property, and I should say as follows: Pool—Vt. Ave. & circle (R. I. Ave); Geo. Taylor & Chipman—Vt. Av. beyond the circle of R. I. Ave.; Stewart, H. & S.—Conn. Ave. and circle & property immediately in that radius—say from Q north when west of N. H. Ave., E. of N. H. Av. as far down-town as they choose, even including 164, over as far E. as 14 & out to Boundary; Dr. Stearns—S. of Q (after 69) & N. of 20th to the Rock Creek & S. to Penn. Ave.; & to Chipman, the property around the new grounds of the N. Y. Ave. sq. & 18th Sts. By doing this we shall avoid any unpleasant feeling of jealousy. After the opportunity has been given each & they decline, that the property can be offerred to any other, but first reserving the right to purchase ourselves and limiting the time for decision to 24 hours' consideration, and in conformity with this view I would suggest that if S., H. & S. should not decide to take 151 or make an offer on it to-morrow you telegraph me at Bedford and I will telegraph an offer from Dr. Stearns, if he thinks favorably of it. We had better put ourselves in shape to take square 153 if I can
1485 get it at 18c., which I will probably know within 2 days after Corcoran's arrival.

I would suggest getting the refusal for 10 days instead of purchasing for S., H. & S. of lots 2 & 3, 15 & 16, sq. 68, of Riggs. If sold he might say something about it to Bright or some one else & effect unfavorably some negotiation.

Of course, no deeds go on record until we get ready. Hand Taylor a copy of his letter of instructions to us about sale of 115, that he may have it fresh in his memory if questioned.

See N. Wilson to-morrow at 12 at Brown's office about Gilhally deed, & check them. Let O. take it to the school building, on the Island, where G. is at work. Let him sign & take his ackn., & his wife will then next morning come to the office & sign & ackn. & receive the money. Comm'n on each side, $87.50. D. of R. is prepared & in the safe for E. & S. to ex when a debt of $300 & int. he owes them is paid, which must be deducted, & $10 advanced G. as deposit.

Get D. of T. from Ward for Dr. S. to sign on lots 17 & 18, sqr. 197, & send him at B. to-morrow or Tuesday.

If I think of anything more I will write again, but I am trying to unload in this memorandum.

Yours truly, J. M. LATTA.

1486 EXHIBIT J. F. O. No. 2. W. T. S. C.

STOCKTON HOUSE, CAPE MAY, *Aug.* 2, 1871.

DEAR OLMSTEAD: Yours of the 31st is at hand; also the various bundles of paper you & Kilbourn were kind enough to send me.

The consideration in the Burchell (Burchell's deed) was to be $2,363.79; which included $143.93 com'ns. I am sorry to hear about sqr. 138, but hope it may yet be revived. * * *

If so, we should crowd our purchases, & I will return for a few days if I am wanted before going on west. I have changed hotels, you will see, & shall probably remain here until the last of next —. We are very well & enjoy our bathing every day. The hotels are not full.

Regards to Kilbourn & all our friends.

Truly yours, J. M. LATTA.

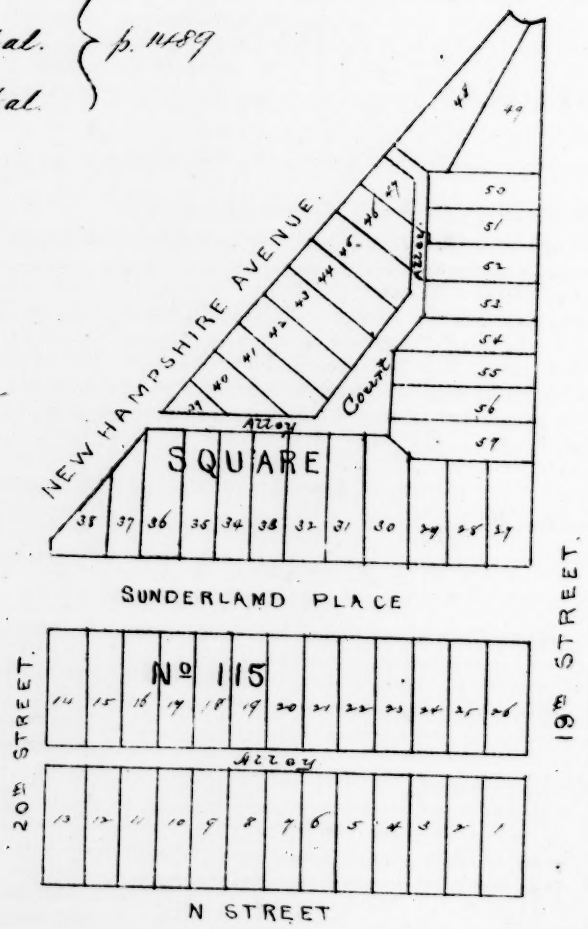
1487 EXHIBIT J. F. O. No. 3. W. T. S. C.

Sqr. 115	1 20
Lot on circle	1 50
Lots not on circle or corners	1 00
Corner lot, 19 & N St.	1 50
158 sqr., north side	1 00
" " south side	1 00
156 sqr.	70
N. ½ 195	1 00
Sq. 155	60
" 151	30
" 93, corner lots	1 00
" " other lots	60
" 66, corner lots	1 00

Prices suggested by C. J. Hillyer, July 7, 1876.

Nos. 158, 261 & 262.
Kilbourn et al.
v.
Hilliger et al.
} p. 1489

Exhibit
J.T.O. No 4



1488 EXHIBIT J. F. O. No. 4. W. T. S. C.

	Price.	Date.	No. of feet.	Per foot.
19th, 56	$2,000	Feb. 9, '81	2,059.78	97 1/10 c.
N. H. Ave., 47	1,000	M'ch 12,	1,205.25	82 9/10 c.
11	1,425	Apr. 26,	1,900	75c.
12	1,425	"	1,900	75c.
14	1,489 98	" 27,	1,986.64	75c.
48	6,647 33	May 28,	4,431.82	1.50
10	1,330	June 13,	1,900	70c.
55	15,000	July 1,	2,059.78	House.
41 to 46, both inc.	11,574 13	" 5,	12,183.30	
43, 44	5,312 50	" 7,	4,250	1.25
10	1,710	Oct. 13,	1,900	90
55	1	Nov. 26,	2,059.78	
56	1	Dec. 23,	2,059.78	
52	9,000	Jan. 23, '82	1,750.00	} House.
52	10,000	" " "	1,750.00	
25, 26	4,875	Feb. 9, '82	3,900.00	1.25

(Here follows diagram marked page 1489.)

1490 EXHIBIT J. F. O. No. 5. W. T. S. C.

Book 11, page 22.

Thomas Young to Washington Corporation, Dr.

To all installment of tax for curbing and paving footway.. $2,054 10
To interest at ten per cent. from Nov. 17, 1871, to ——---

Square 156, lots 1 to 12, inc.
Received payment,

—— ——, *Collector*,
By —— ——.

1491 EXHIBIT J. F. O. No. 6. W. T. S. C.

17 Q. Do the books of the firm show all purchases and sales of real estate on firm account?

A. Yes, sir; since 1871. There are two real estate accounts on the firm books. To facilitate keeping the accounts and to seperate the commission account from our speculative account we had an account which was called the "Kilbourn, Latta & Olmstead account." That comprised all the speculations of the firm, with the exception of a rather small account called the "bond account." Then the property that did not go into the firm, but which Kilbourn & Latta

bought outside these two pieces, was entered on the books under the title of J. M. Latta & Hallet Kilbourn.

18 Q. Have you the books here?

A. Yes, sir.

19 Q. Please state from the books what real estate was purchased by the firm during its existence and what sold.

A. I have a memorandum made from the books, from which I read. We made purchases as follows:

1492

			Cash.
1871.			
June	15.	West 20 ft. of lot 5, sqr. 157	564 00
	29.	Sublot 47, sqr. 182	1,188 60
Sept.	8.	280 acres of land in Wisconsin	210 00
"	15.	Lot 2, sqr. 50	600 00
"	28.	West 25 ft. of lot 21, sqr. 158	1,035 25
1872.			
May	9.	Lot 10, sqr. 158	3,025 80
"	27.	Sublot C, sqr. 160	907 10
"	"	" D, "	1,000 00
"	23.	Lot 17, sqr. 158	5,000 00
"	30.	West half lot 9, 158	2,600 00
"	31.	Sublots 12 to 43, inclusive, sqr. 69	8,355 38
June	1.	Lot 8, sq. 158	4,000
"	14.	" 17, " 69	1,600
July	8.	" 16, " "	1,200
"	8.	Lots 43 to 44, sq. 183	800
Oct.	21.	Sublots 7 & 8, sq. 99	1,391 25
Nov.	23.	Sublot 39, sq. 241	2,400
1873.			
May	20.	We bought, in connection with the Real Estate Asseciation, sublots 4, 6, of 89, A B, 12, 13, 14, 15, 16, sqr. 242, we taking sublots B, 12, 13, 14, 15, & 16 at about	40,492
	15.	Sublots F & part of 3, sqr. 280 (the N-St. house)	16,500
April	29.	Part of lot 1, sqr. 70	2,551 75
1874.			
Jan'y	26.	295 acres land in Indiana	2,950

1493 Oct. 14, 1872, we bought at tax sale sublot 60, in sqr. 182, for which we did not get a deed until Feb'y 23, 1875; that cost us $200.

December 8, 1873, we bought Judge MacArthur's interest in the R. E. A. for $5,000. Dec. 19, 1874, we bought Young's interest for $5,000. November 6, 1875, we bought the Jay Cooke & Co. interest for $40,000.

Nov. 8, 1875, we bought Parker & Belknap's interests for $7,000 each, $14,000.

That, I believe, comprises all the real estate bought.

1494 EXHIBIT J. F. O. No. 7. W. T. S. C.

21 Q. Please examine the paper marked J. F. O. No. 1 and state what it is, by whom it was made out, and the circumstances under which it was made out.

A. This paper was made out by Mr. John Bull. It says: "Statement showing the properties held in trust by the several members of the firm of Kilbourn & Latta, for whom held, and in what proportions, April 12th, 1873." It was made out a few days prior to Mr. Latta's going to Europe. He held a large amount of property as trustee, without any declaration of trust having been given. Mr. Kilbourn held some property as trustee, and I held the property of the firm absolutely. Mr. Latta held some property absolutely, also. This paper gives the square and number of lots, by whom held, for whom held, and the proportion of *cestui que trusts*. It is signed by James M. Latta, Hallet Kilbourn, and John F. Olmstead. I think three copies were made, one for each member of the firm. I think the idea of it was to have something in writing to show, in case any accident happened.

(Mr. Mattingly offers in evidence a copy of the above-named paper, marked J. F. O. No. 1), which is as follows:

1495 *Statement Showing the Properties Held in Trust by the Several Members of the Firm of Kilbourn & Latta, for Whom Held, and in What Proportion, Apr. 12, 1873.*

No. of square.	No. of lots.	By whom held.	For whom held.	Proportions of *cestui que trusts.*
156	All	James M. Latta, tr.	Thomas Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
97	Lots 18 to 25, inclu.	"	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
"	P't lot 10	"	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
115	All	"	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
158	Lot 17	"	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
155	All	"	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
134	Lots 27 to 49, inclu.	"	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
195	Lots 11 to 25, incl.	James M. Latta, fee	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
151	All except lots 1 to 16, 20, 21, 22, 25, & 26.	" tr.	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
158	W. P't lot 9	" tr.	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
"	Lot 10	"	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
"	W. 25 ft. of lot 21	"	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
"	Lot 3	"	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.
67	1496 Lots 3, 4, & 5	James M. Latta, tr.	Thos. Sunderland	Three-fourths.
			C. J. Hillyer	One-fourth.

158	Lot 8	"	Thos. Sunderland	Three-fourths.
		"	C. J. Hillyer	One-fourth.
93	All	"	Thos. Sunderland	One-half.
		"	C. J. Hillyer	One-half.
66	All except S. W. corner, cont'g 37,451.69 sq. ft.	"	Thos. Sunderland	One-half.
		"	C. J. Hillyer	One-half.
92	All	"	Thos. Sunderland	The whole.
68	Lots 2, 3, 15, & 16	" fee	"	"
69	Lot 17	" tr.	"	"
67	P't 6 and all 12, 13, & 14, 15 & 19	" "	"	"
138	All	Sold about 30,000 sq. ft. to Ed. Thornton	"	"
97	P't lot 9	"	"	"
67	Lots 9, 10, 11, 16, & 17	"	"	"
176	Lots 1, 2, 3, & 4	"	"	"
177	E & F	"	"	"
153	All	"	"	"
69	1497 Lot 16	James M. Latta, tr.	* Thos. Sunderland	The whole.
			* Jay Cooke & Co.	One-half.
		Hallet Kilbourn, tr.	* P. M. B. Young	One-tenth.
181	Lots 1, 2, & 3	K., L. & O., $\frac{3}{10}$	* C. A. Eldridge, K., L. & O.	One-tenth.
		C. A. Eldridge, $\frac{1}{10}$	* Arthur MacArthur	One-tenth.
			* W. W. Belknap	One-tenth.
			* E. S. Parker	One-tenth.
182	55 & 56	Sold Ed. Young	Same as above	Same as above.
157	23 to 29, incl.	Sold Nott	" " "	" " "
181	41, 42, & 43	Same as above, &c.	" " "	" " "
204	14	" " "	" " "	" " "
"	5 to 13, incl.	" " "	" " "	" " "
181	31	" " "	" " "	" " "
"	32 to 37	" " "	" " "	" " "
"	38, 39, & 40	" " "	" " "	" " "
157	1, 2, 3, & 4	Lot 4 sold Mrs. Derby	" " "	" " "
242	50 & 51	Sold U. S. Grant	" " "	" " "
241	40, 41, 42, 43, 44, 64, 65, & 66	" " "	" " "	" " "
"	63	" " "	Hallet Kilbourn	Three-eighths.
*50	* Lot 2	* J. F. Olmstead	James M. Latta	Three-eighths.
			J. F. Olmstead	Two-eighths.

* Erased by pencil in original.

Statement Showing the Properties Held in Trust, &c.—Continued.

No. of square.	No. of lots.	By whom held.	For whom held.	Proportions of *cestui que trusts.*
157	W. 20 ft. of lot 5	*J. F. Olmstead	Same as above	Same as above.
*160	*Sub C & D	Sold to Conklin *J. F. Olmstead	Hallet Kilbourn James M. Latta J. F. Olmstead	Three-eighths. Three-eighths. Two-eighths.
*69	1498 *Lots 12 to 43, inc.	J. F. Olmstead	Hallet Kilbourn James M. Latta J. F. Olmstead	Three-eighths. Three-eighths. Two-eighths.
*99	*Subs 7 & 8	"	Same as above	Same as above.
*241	* " 39	"	" " "	" " "
*182	*Sub 47	"	" " "	" " "
*183	* " 43 & 44	"	" " "	" " "
234	" 30	James M. Latta	Hallet Kilbourn James M. Latta	One-half. One-half.
158	P't lot 2 (E. 31^6)	"	Same as last above	Same as above.
	280 acres of land in Wisconsin, Polk Co.	"	Hallet Kilbourn James M. Latta	Three-eighths. Three-eighths.
	295 a. in St. Jo. Co., Ind.		J. F. Olmstead	Two-eighths.
*509	*All	James M. Latta ?	Charles A. Eldridge, in joint account with Kilbourn, Latta, & O.	One-half.
*727	*All	James M. Latta	John Stearns	The whole.
*205	*Lots 11 & 12	Transferred to Stearns	"	"
*99	* " 2, 4, & 5	Transferred to Stearns	"	"

*Erased by pencil in original.

JAMES M. LATTA.
HALLET KILBOURN.
J. F. OLMSTEAD.

"22 Q. Please explain the pencil marks, erasures, and interlineations on Exhibit J. F. O. No. 1.

A. The marks on this paper, with the exception of one (which is opposite sqr. 138), were all made by Mr. Latta, I believe; at
1499 least, they seem to be in his handwriting, and were, I suppose, made from time to time, as the property was changed, sold, or disposed of.

(Mr. Davidge objects to the supposition of the witness.)

23 Q. In what condition was the paper at the time it was executed?

A. It was clean, without any of these marks; it was executed a few days before Mr. Latta went to Europe."

1500 EXHIBIT J. F. O. No. 8. W. T. S. C.

"61 Q. What was the relative amount of profits arising from brokerage commissions and your speculative investments and the purchase and sale of property by the firm on its own account?

A. Without speaking exactly, as I have not had time to examine the books and do not wish to speak as an expert in that line, the profits arising from commission account during the partnership were between sixty and seventy thousand dollars. The profits arising from speculations in real estate were a little upwards of $40,000, and, as far as the real estate applies, I apply it to the property I have enumerated in my previous testimony.

62 Q. What do you mean by speculation in real estate in your last answer?

A. I mean the real estate that they bought and which has been sold."

1501 EXHIBIT J. F. O. No. 9. W. T. S. C.

"64 Q. I want to ask you if those purchases and sales of real estate to which you have testified were entered on the firm books, and whether the profits were divided among the members of the firm in the proportion of the interest of each.

A. The purchases of real estate by the firm were entered to the property account of the firm, which was known as Kilbourn, Latta & Olmstead, and any sales that were made of that property were entered to the credit of that account, and that account was balanced, as all other accounts were, at the end of each year. I think up to 1875 they were balanced and charged or credited to the individual members, in proportion to their respective interests, $\frac{1}{4}$, $\frac{3}{8}$, and $\frac{3}{8}$."

1502 EXHIBIT J. F. O. No. 10. W. T. S. C.

"57 Q. He makes some statements in regard to a proposition that if he would pay the amount you said was due to Sunderland and Hill yer (being $2,715.58), you would call it square. Will you state what there is about that?

A. He stated that I said that if he would pay the $2,715.58, which I thought was the amount due to Sunderland & Hillyer (relying on his statement of the amount that he had received from Stearns & Thyson as being true), I would call it square. That is what he states, and I say that it is a damned lie. I never made any such statement or proposition. I never made any proposition whatever to settle with him."

1503 EXHIBIT J. F. O. No. 11. W. T. S. C.

96 Q. You remember an investigation which took place touching what was known as the Real Estate Pool. The investigation was made, by or through a joint committee of the two Houses of Congress, in 1874, I think. Were you present and did you have the testimony of Mr. Latta (who is the defendant in this case) before that investigating committee?

A. I did. I heard the whole of it.

97 Q. Do you know what he stated as to his knowledge of the persons who constituted what was called the Real Estate Association or the Real Estate Pool? If so, state what he said.

(Question objected to by defendant's counsel as immaterial and irrelevant.)

A. I think he stated in answer to Judge Wilson—of course the evidence is in print—that he did not know a single person connected with the Real Estate Association or Real Estate Pool, so called.

(Objected to by counsel for the defendant for the reason above.)

98 Q. That answer was in response to a question by whom?

A. I think it was in response to a question by Judge Wilson, though I am not positive about that. The record will show.

99 Q. What have you to say as to the truthfulness of that answer which he made touching his knowledge of the persons constituting the Real Estate Association?

(Question objected to by Mr. Wilson because immaterial
1504 and irrelevant and as not being calculated to elicit any information that is in any way relevant to this case.)

A. I say that that answer was false—that he did know, because he had more than a year before that signed two declarations of trust, which were signed also by the beneficiaries under that trust, copies of which declarations are in evidence in case No. 5921.

(Answer objected to by Mr. Wilson for the reason that the same is wholly irrelevant to this case and is not the best evidence.)

1505 EXHIBIT J. F. O. No. 12. W. T. S. C.

DR. *Hallet Kilbourn, Trustee.* CR.

1871.				1871.			
Aug.	31	To folio 99	$3,055 00	Aug.	31	By folio 99	$2,292 00
"	"	" " "	18 00	Sept.	4	" " 102	783 00
Sept.	18	" " 107	16,402 95		15	" " 106	4,157 32
"	"	" " 108	5 00		18	" " 107	12,299 00
	19	" " "	25 00		25	" " 110	5,006 50
	18	" " 107	17 50	Oct.	3	" " 113	13,833 50
	19	" " 108	5 00		4	" " 115	52,000 00
	25	" " 110	6,675 40		21	" " 123	500 00
"	"	" " "	5 00		24	" " 124	7,288 10
Oct.	2	" " 113	20 00		27	" " 125	2,666 70
	4	" " 114	65,748 00		31	" " 129	2 00
"	"	" " 115	5 00	Nov.	6	" " 131	900 00
	5	" " 116	54 00		7	" " 133	6,611 04
	12	" " 119	10 00		"	" " "	6,611 04
	21	" " 123	1,527 70		28	" " 140	300 00
	27	" " 125	3,555 60	Dec.	30	" " 155	80 00
"	"	" " "	4 00	1872.			
Nov.	7	" " 132	17,629 44	M'ch	15	" " 181	383 74
"	"	" " 133	18 00	Ap'l	2	" " 187	910 00
	29	" " 142	39 36	May	15	" " 204	508 04
"	"	" " "	149 00				
Dec.	20	" " 150	144 36				
	22	" " 151	3 32				
	27	" " 152	2 50				
	21	" " 150	80 00				
	30	" " 154	30 50				
1872.							
M'ch	12	" " 180	24 50				
	15	" " 181	383 74				
Ap'l	2	" " 187	910 00				
	5	" " 188	1 61				
"	"	" " 189	400 00				
	12	" " 192	10 00				
	25	" " 195	172 50				
			$117,131 98				$117,131 98
May	27	" " 207	$90,429 90	May	27	By folio 207	$90,429 90

1506 EXHIBIT S. AND H. No. 1. W. T. S. C.

WASHINGTON, D. C., *Sept.* 10, 1878.

Received of Kilbourn & Olmstead, on account of the late firm of Kilbourn & Latta, two thousand seven hundred and fifteen dollars and fifty-eight cents ($2,715.58).

SUNDERLAND & HILLYER.
THOS. SUNDERLAND.

1507 EXHIBIT J. F. O. No. 13. W. T. S. C.

Copy.

Contract.

This agreement witnesseth that we, Thomas Sunderland and Curtis J. Hillyer, having empowered John F. Olmstead, of Washington,

D. C., to attend to the revision of special assessment against our property in said city of Washington, and hereby agree to give as compensation for his services ten per centum of all allowance, collections, or drawbacks on any of said property, and ten per centum of any rebate of interest charged on said special assessment.

(Signed) THOMAS SUNDERLAND.
C. J. HILLYER,
Per THOMAS SUNDERLAND.

In pencil: "July 6, 1878."

(See table.)

1509 EXHIBIT J. F. O. No. 14. W. T. S. C.

Amounts Due by Sunderland & Hillyer During the Year 1873.

	Pri'c'l 7th note, $17,000, due May 17, 1873	$1,700 00 P'd.
	Int. on same, 6 mo., 7%, " " "	595 00 P'd.
Square 156	Int. on $13,000 for 1 year, 7%, due Oct. 2, 1873	910 00
	" $13,000 " 1 " 7%, " " " "	910 00
	" 6,500 " 6 mo, 7%, " " " "	227 50
	Principal of last note, " " " "	6,500 00
	Int. on $7,000 for 6 mos., 7%, " " " "	245 00
	" $6,000 " 6 " 7%, " " " "	210 00.
P't lot 10, sq. 97	" $1,200 " 1 yr., 6%, " May 25, 1873	72 00 P'd.
Sq. 115	" $32,000 " 6 mos., 6%, " " 25, "	960 00 P'd.
	" $13,000 " 6 " 6%, " " 25, "	390 00 P'd.
	Prin. 2d note, " " " "	6,500 00 P'd.
Lot 17, sq. 158	Int. on $4,000 " 6 mos., 6%, " " 30, "	120 00 P'd.
" 155	" $54,550.65, 6 " 7%, " " 24, "	1,909 27 P'd.
Lots 27 to 49, sq. 134	Prin. of 1st note, " June 1, "	3,500 00 P'd.
	Int. on same, 1 year, 6%, " " " "	210 00 P'd.
	" 2d & 3d notes, $7,000, 1 year, 6%, due June, 1873.	470 00 P'd.
Lots 11 to 25, sq. 195	" $40,000, 6 mos., 7%, due June 3, 1873	1,400 00 P'd.
Lots in sq. 151	" $18,864.75, 6 " 6%, " " 4, "	565 94 P'd.
W. p't lot 9, sq. 158	Prin. 1st note, $800, " May 30, "	800 00 P'd.
	Int. on same, 1 year, 6%, " " " "	48 00 P'd.
Lot 10, sq. 158	" $2,500, 6 mos., 6%, " " 9, "	75 00 P'd.
P't lot 21, sq. 158	Prin. 2d note, "Sept. 28, "	258 31
	Int. on same, 6 mos., 6%, " " " "	7 75
	" 3d note, $258.31, 6 mos., 6%, due Sept. 28, 1873.	7 55
Lot 3, sq. 158	Prin. of 1st note, due May 28, 1873	2,712 00 P'd.
	Int. on same, 1 year, 6%, due May 28, 1873	162 72 P'd.
	" 2d note, $27.12, 1 yr., 6%, due May 28, 1873.	162 72 P'd.
Lots 3, 4, & 5, sq. 67	Prin. 2d note, due June 18, 1873	2,261 33 P'd.
	Int. on same, 1 year, 6%, due June 18, 1873	135 67 P'd.
1510 Lot 8, sq. 158	* Prin. 1st note	
Sq. 93	Int. on $31,700, 6 mos., 6%, due June 19, 1873	951 00 P'd.
Sq. 66	" $20,000, 6 " 6%, " " 11, 1873	600 00 P'd.
" 113	" $11,446, 6 " 6%, " May 3, "	343 38 P'd.
Sq. 156	Paid Apr. 2d, 1873, 6 mos.' int. on 3 notes, $7,000, $6,500, & $6,000, @ 7%.	682 50

* Erased in original.

1511 EXHIBIT J. F. O. No. 15. W. T. S. C.

Amounts to be Paid by Sunderland & Hillyer to Jan. 1, 1874.

	On square 156	$6,727 50			
		*4,227 50			
	Paid	2,000 00			
	Balance	4,727 50			
	Present credit bal. of ac.	5,281 37			
	Cr. bal. after paying above	553 87			
1873.					
Nov. 9.	Lot 10, square 158			75 00	P'd.
24.	" 155			1,909 27	
25.	" 115			960 00	
30.	" 115			195 00	
"	Lot 17, " 158			120 00	
Dec. 3.	Lots 11 to 25, square 195			1,400 00	
4.	" " " 151			565 94	
11.	" 66			600 00	
19.	" 93			951 00	
Nov. 13.	Special taxes on lots 11, 12, & 13, sq. 195	$1,692 27			
	10% int. to Nov. 13, '73	169 23			
				1,861 50	
					8,637 71
	Deduct cr. bal. as above				553 87
	Amount required				$8,083 84

Amounts to be Paid by T. Sunderland.

Nov. 27.	On lots 2, 3, 15, & 16, sq. 68		170 78	
Dec. 14.	" 153		927 50	
				1,098 28
	Special tax on lots in sq. 92	$1,602 25		
	10% int. to Nov. 25, '73	120 15		
				1,722 40
				2,820 68
	Less cr. bal. of ac.			652 47
	Amount required			$2,168 21

* In red ink.

Amounts Required.

Sunderland and Hillyer	$8,083 84
Thos. Sunderland	2,168 21
Total	10,252 05

1512 EXHIBIT J. F. O. No. 16. W. T. S. C.

Statement Showing the Proportionate Amounts Belonging to T. Sunderland & C. J. Hillyer, Respectively, of the Several Payments Made by K. & L., for Ac. of Sunderland & Hillyer, from June 26, 1872, to Jan. 24, '74.

	Sunderland.	Hillyer.
Square 156	$28,283 39	$9,427 79
Lots 18 to 25, square 97	35 89	11 96
P't lot 10, square 97	67 48	22 50
Square 115	8,016 25	2,672 08
Lot 17, square 158	318 85	106 28
Square 155	4,974 12	1,658 04
Lots 27 to 49, square 134	3,120 25	1,040 25
" 11 " 25 " 195	4,935 28	1,645 09
" in square 151	1,588 94	529 65
W. p't lot 9, square 158	647 62	215 88
Lot 10, square 158	188 36	62 79
W. 25 ft. of lot 21, square 158	439 36	146 45
Lot 3, square 158	2,190 71	730 23
Lots 3, 4, & 5, square 67	3,594 19	1,198 06
Lot 8, square 158	17 44	5 81
Square 93	951 00	951 00
" 66	600 00	600 00
General expenses, not ch'g'ble to any particular lot	164 43	54 81
	60,133 56	21,078 67

Payments by T. Sunderland.

1872, Oct. 3	10,000 00
1873, Jan. 10	471 99
May 5	15,742 97
" 27	11,000 00
Aug. 9	5,000 00
Sept. 23	10,000 00
Nov. 12	5,000 00
Dec. 5	5,000 00
	62,214 96

Payments by C. J. Hillyer.

1872, Oct. 1	$6,000 00
1873, Jan. 8	5,000 00
May 7	4,398 75
July 9	5,000 00
	20,398 75

1513 EXHIBIT J. F. O. No. 17. W. T. S. C.

Amount P'd to January 24, 1874, in the Several Properties of Sunderland & Hillyer by Kilbourn & Latta.

Square 156	$57,757 82
Lots 18 to 25, incl., square 97, p'd in full	4,112 04
P't lot 10, square 97	487 23
Square 115	30,712 83
Lot 17, square 158	4,760 13
Square 155	25,076 80
Lots 27 to 49, inc., square 134	8,095 15
" 11 " 25 " " 195	19,140 87
All of sq. 151 except 1 to 16 & 20, 21, 22, 25, & 26	7,143 09
W. p't lot 9. sq. 158	2,122 50
Lot 10, sq. 158	2,827 15
W. 25 ft. of lot 21, square 158	1,877 38
Lot 3, square 158	4,754 94
Lots 3, 4, & 5, square 67, p'd in full	7,418 29
Lot 8, square 158	2,460 25
Square 93	13,569 72
" 66	8,621 68
" 113 (assumed by W. M. S.)	4,520 47
Total	$205,458 34

E. & O. E.

The last property in above list (sq. 113) has been sold to W. M. Stewart, who assumes the deferred payments.

1514 EXHIBIT J. F. O. No. 18. W. T. S. C.

Amounts Due by Thos. Sunderland to Feb. 1, 1874.

Lots 7 & G to N, sq. 92.	Int. on $7,043.40, 6 mo., 6%, due Apr. 23, '73.		211 30 pd.
Lot 3, sq. 92	Int. on $3,500, 6 mo., 6%, due May 31, '73.		210 00 pd.
Lots 2, 3, 15, & 16, sq. 68.	Int. on $4,879.38, 6 mo., 7%, due, May 27, '73.		170 78 pd.
Lot 2, sq. 92	Prin. of 8 notes, $270 each, due June 27, '73.	2,160	pd.
	Int. on same, 1 year, 6 %, due June 27, '73.	129 60	2,289 60 pd.
Lot 17, sq. 69	Prin. of note, due June 29	1,000 00	
	Int. on same, 1 year, 6 %, due June 29.	60	1,060 00 pd.
P't 6 & 12, 13, 14, 15, & 19, sq. 67.	Prin. 1st note, due Aug. 3, '73	2,401 33	
	Int. on same, 6 mos., 6 %, due Aug. 3, '73.	72 04	2,473 37 pd.
	Prin. on 4th note, due Aug. 3, '73.	800 44	
	Int. on same, 6 mos., 6 %, due Aug. 3, '73.	24 01	824 45 pd.
	Int. on 2d, 3d, 5th, & 6th notes, $6,403.57, 6 mos., 6 %, due Aug. 3, '73.		192 10 pd.
Sq. 138	Prin. 1st note, due July 24, '73	8,000	
	Int. on same, 6 mos., 7 %	280	8,280 00 pd.
	Int. on 2d note, $8,000, 6 mos., 7 %.		280 00
P't lot 9, sq. 97	Prin. note, due Sept. 4, 1873	500 00	
	Int. on same, 1 year, 6 %, due Sept. 4, 1873.	30 00	530 00 pd.
Lots 9, 10, 11, 16, & 17, sq. 67.	Int. on $9,000, 6 mos., 6 %, due July 6, 1873.		
Lot 1, sq. 92	Prin. 1st note, due Jan'y 29, '74	2,250 00	
	Int. on same, 6 mos., 6 %, due July 29, '73.	67 50	pd.
	Int. on same, 6 mos., 6 %, due Jan'y 29, '74.	67 50	2,385 00 pd.
	Int. on 2d note, $2,250, 6 mos., 6 %, due July 29, '73.	67 50	
	Int. on 2d note, $2,250, 6 mos., 6 %, due Jan. 29, '74.	67 50	135 00
Lots 1, 2, 3, & 4, sq. 176; lots E & F, sq. 177.	Prin. of 1st note, due Jan. 24, '74.	903 93	
	Int. on same, 6 mos., 6 %, due July 24, 73.	27 29	
	Int. on same, 6 mos., 6 %, due Jan., '74.	27 29	958 51 pd.
	Int. on 2d & 3d notes, due July 24, '73.	54 59	
	Int. on 2d & 3d notes, due Jan. 24, '74.	54 59	109 18 pd.
			21,997 80
Sq. 153	1st payment, due July 14, '73		752 00 pd.
	Int. due July 14, '73		175 00
* Lot 1, sq. 92	6 mos. int. on 2d note of $2,250		135 00

* In red ink.

1515 EXHIBIT J. F. O. No. 19. W. T. S. C.

Taxes of All Kinds Ag't the Property of Sunderland and Hillyer Remaining Unpaid March 7, '74.

On what property.	Gen. tax.	Special imp. tax.	Sewer tax.	Water main & fire plug.
Lots in square 66	517 44	----------	1,603 92	
" " " 67	195 16	----------	373 12	
" " " 93	691 56	1,516 03	1,746 76	
" " " 97	93 00	216 57	306 32	56 44
" " " 115	712 96	4,523 39	1,512 79	850 68
" " " 134	228 76	----------	631 70	
" " " 151	706 66	----------	2,575 14	
" " " 155	1,399 42	----------	3,067 16	
" " " 156	1,805 76	----------	3,616 08	
" " " 158	299 24	2,086 60	657 88	
" " " 195	760 88	----------	1,089 53	258 70
Total	7,410 84	$8,342 59	17,180 40	1,165 82

Recapitulation.

General tax	7,410 84
Special imp. tax	8,342 59
Sewer "	17,180 40
Water main & fire plug	1,165 82
Total	34,099 65

GENTLEMEN: The general tax, $7,410.84, can remain without penalty until June 30th, '74, after which certificates are issued and sold against each lot as taxed. The water-main and fire-plug tax, $1,165.82, is payable in four annual installments. The first was
1516 due Nov., 1873. No penalty attaches for non-payment except 6% interest.

The Board of Public Works are issuing certificates against property on which bills have been rendered for special improvement and general sewer, which will date back to September, '73, in most cases and bear interest at 10% per annum. After the certificates are issued the tax must be paid in cash, with interest. If paid before the certificates are out you can pay in imp't & sewer bonds, which can be

bought now at about 20% less than par, and no interest; hence you can save 20% and interest from Sept., '73, by prompt payment.

Very resp'y,
(Signed) KILBOURN & LATTA.

1517 *Taxes of All Kinds Against the Property of Thomas Sunderland Remaining Unpaid March 7, 1874.*

On what property.	Gen. tax.	Special imp. tax.	Sewer tax.	Water main & fire plug.
Lots in sqr. 68	78 64		324 58	
" " " 69	32 56		223 84	
" " " 92	315 46		877 81	
" " " 138	305 56		777 65	516 36
" " " 153	692 18		1,771 48	685 05
" " " 176	32 68		85 41	
" " " 177	38 08		74 72	
" " " 67	127 46		1,107 48	
Total	1,622 62		5,242 97	1,201 41

Recapitulation.

General tax	1,622 62
Special imp. tax	
Sewer "	5,242 97
Water main & fire plug	1,201 41
Total	$8,067 00

1518 EXHIBIT J. F. O. No. 20. W. T. S. C.

Amounts to be Paid Sunderland & Hillyer for the Year 1874.

On sq. 93	June 21, 1874,	int.	951 00	
	Dec. 21,	"	951 00	1,902 00
" " 66	June 11,	"	600 00	
	Dec. 11,	"	600 00	1,200 00
" " 156	Oct. 2,	prin.	7,000 00	
	April 2,	int.	245 00	
	Oct. 2,	"	245 00	

On sq. 156	Oct.	2,	1874,	prin.	6,000 00	
	Ap'l	2,	"	int.	210 00	
	Oct.	2,	"	"	210 00	
	"	2,	"	"	910 00	
	"	2,	"	"	910 00	
						15,730 00
W. 25 ft., lot 21, sq. 158.	Mar.	28,	"	"	7 75	
	Sept.	28,	"	prin.	258 31	
	"	"	"	int.	7 75	
						273 81
Lot 10, sq. 158	May	9,	"	"	75 00	
	Nov.	9,	"	"	75 00	
						150 00
P't lot 10, sq. 97	May	25,	"	prin.	1,200 00	
	"	"	"	int.	72 00	
						1,272 00
Sq. 115	"	"	"	"	960 00	
	Nov.	25,	"	"	960 00	
						1,920 00
	May	30,	"	prin.	6,500 00	
	"	"	"	int.	195 00	
						6,695 00
Lot 17, sq. 158	"	"	"	prin.	4,000 00	
	"	"	"	int.	120 00	
						4,120 00
W. p't lot 9, sq. 158	"	"	"	prin.	800 00	
	"	"	"	int.	96 00	
						896 00
	Amount carried over					34,158 81
	Amount brought forward					34,158 81
1519 Square 155	May	24, '74,		int.	1,909 27	
	Nov.	24, '74,		"	1,909 27	
						3,818 54
Lots 27 to 49, sq. 134	June	1, '74,		prin.	3,500 00	
	"	"	"	int.	210 00	
	"	"	"	"	210 00	
						3,920 00
Lots 11 to 25, sq. 195	"	3,	"	"	1,400 00	
	Dec.	3,	"	"	1,400 00	
						2,800 00
Lots in square 151	June	4,	"	"	565 94	
	Dec.	4,	"	"	565 94	
						1,131 88
Lot 3, square 158	May	28,	"	prin.	2,712 00	
				int.	325 44	
						3,037 44
Lot 8, square 158	June	1, '74,		prin.	1,000 00	
	"	"	"	int.	120 00	

Lot 8, square 158	June 1, '74, prin.	1,000 00	
	" " " int.	120 00	
			2,240 00
			51,106 67
Dr. bal. of Thos. Sunderland's ac. on books of K. & L. March 7, 1874		$3,473 16	
Cr. bal. of Sunderland & H. ac. on books of K. & L. March 7, 1874		2,008 48	
Dr. bal. of combined acs.			1,464 68
Total amount to be paid			52,571 35

1520 EXHIBIT J. F. O. No. 21. W. T. S. C.

Amounts Paid for Sunderland & Hillyer Since June 26, 1872, the Date of Their Last Settlement.

Square 156	38,166 18	9,541 54	28,624 64
Lots 18 to 25, square 97	47 85	11 96	35 89
P't lot 10, square 97	89 98	22 49	67 49
Square 115	10,688 33	2,672 08	8,016 25
Lot 17, square 158	425 13	106 28	318 85
Square 155	6,632 15	1,658 04	4,974 11
Lots 17 to 49, square 134	4,161 00	1,040 25	3,120 75
Lots 11 to 25, square 195	6,580 37	1,645 09	4,935 28
Square 151	2,118 59	529 65	1,588 94
W. p't lot 9, square 158	863 50	215 88	647 62
Lot 10, square 158	326 15	81 54	244 61
P't lot 21, square 158	585 81	146 45	439 36
Lot 3, square 158	2,920 94	730 24	2,190 70
Lots 3, 4, 5, square 67	4,792 25	1,198 06	3,594 19
Lot 8, square 158	23 25	5 81	17 44
Square 93	1,902 00	951 00	951 00
Square 66	1,200 00	600 00	600 00
Square 113			
Expense ac.	218 75	109 38	109 37
Total payments	$81,742 23	21,265 74	60,474 49

1521 *Credits.*

1872.			
Oct. 2.	C. J. Hillyer	6,000 00	
3.	Thos. Sunderland	------	10,000 00
1873.			
Jan. 8.	C. J. Hillyer	5,000 00	
" 10.	Thos. Sunderland	------	471 99
Mar. 31.	Both, ¼ to C. J. H. & ¾ to T. S., rent of 67	5 25	15 75
May 5.	Thos. Sunderland	------	15,742 97
17.	C. J. Hillyer	4,398 75	

May 27.	T. S.	------	11,000 00
June 9.	Both, ¼ to C. J. H. & ¾ to T. S.	62 50	187 50
20.	" ½ " ½ " sq. 66	30 00	30 00
July 9.	C. J. Hillyer	5,000 00	
18.	Both, ½ each	52 50	52 50
Aug. 9.	T. Sunderland	------	5,000 00
Sept. 23.	Do. do.	------	10,000 00
Oct. 2.	Both, ½ to each, rent of 66	25 00	25 00
Nov. 12.	T. Sunderland	------	5,000 00
Dec. 5.	Do. do.	------	5,000 00
16.	Both, ½ each, rent of 66	25 25	25 00
1874.			
Feb. 3.	" ¼ C. J. H., ¾ T. S., rent of 195	12 50	37 50
26.	" ¼ " ¾ " " 67	5 25	15 75
Mar. 28.	" ½ to each, rent of 66	20 00	20 00
May 18.	C. J. Hillyer	3,030 59	
		*23,667 34	62,623 96

1522 EXHIBIT J. F. O. No. 22. W. T. S. C.

Payments Due by Sunderland & Hillyer & Thos. Sunderland to Sept. 1, 1874.

1874.		
	Dr. bal. of both acs. on books of K. & L. June 22, '74	600 33
June 24.	On square 93, int.	951 00
May 30.	" lot 17, sq. 158, prin.	4,000 00
	int.	120 00
July 3.	Lots 9, 10, 11, 16, & 17, sq. 67	270 00
" 8.	Lot 16, sq. 69, prin.	800 00
	int.	96 00
24.	Lots in sqs. 176 & 177, int.	54 60
29.	Lot 1, " 92	67 50
Aug. 3.	P't lot 6 & all 12, 13, 14, 15, & 19, sq. 67, prin.	2,401 33
	int.	72 04
	"	72 04
	Same lots, prin.	800 44
	int.	24 01
	"	24 01
		10,353 30
	Gen'l taxes due July 1, '74	9,070 26
	Special imp't taxes, $8,342.59, ⅛ of which is due (say)	1,668 52
		21,092 08
	For water mains, $3,139.76, ¼ of which is past due & must be paid, say	784 94
		21,877 02

*In pencil in original.

1523 EXHIBIT J. F. O. No. 23. W. T. S. C.

Statement of Payments to be Made by Sunderland & Hillyer from Oct. 1, 1874, to Dec. 31, 1874, incl.

1874.			
Dec. 21.	On square 93, int.		951 00
11.	" " 66, "		600 00
Oct. 2.	" " 156, prin.	7,000	
" 2.	" " " int.	245	
" 2.	" " " prin.	6,000	
" 2.	" " " int.	210	
" 2.	" " " "	910	
" 2.	" " " "	910	
Nov. 9.	" lot —, sq. 158, int.	75	
25.	" " 115, "	960	
24.	" " 155, "	1,909	27
Dec. 3.	" lots 11 to 25, sq. 195, int.	1,400	00
" "	" 151, "	565	94
		$21,736	21

E. & O. E.

Payments to be Made by Thomas Sunderland from October 1st to December 31, 1874, incl.

1874.		
Oct. 23.	On lot 7 & sub G to N, incl., sq. 92, int.	211 30
Nov. 27.	" lots 2, 3, 15, & 16, sq. 68, int.	170 78
Dec. 14.	" sq. 153, int.	752 50
		$1,134 58

1524 EXHIBIT J. F. O. No. 24. W. T. S. C.

Square 113	Due May 3, '74	343 38
	" Nov. 3, '74	343 38
Square 93	" June 19, '74	951 00
	" Dec. 19, '74	951 00
Square 66	" June 11, '74	600 00
	" Dec. 11, '74	600 00
Square 156	" Ap'l 2, '74	245 00
	" Oct. 2, '74	245 00
	" " " '74	7,000 00
	" " " '74	6,000 00
	" Ap'l 2, '74	210 00
	" Oct. 2, '74	210 00
	" " 2, '74	910 00
	" " 2, '74	910 00
W. 25 ft. of lot 21, sq. 158	" Sept. 28, '74	258 31
	" Mar. 28, '74	7 75
	" Sept. 28, '74	7 75

Lot 10, sq. 158	Due	May 9, '74	75 00
	"	Nov. 9, '74	75 00
P't lot 10, sq. 97	"	May 25, '74	1,200 00
	"	" " '74	72 00
Square 115	"	" 25, '74	960 00
	"	Nov. 25, '74	960 00
	"	May 30, '74	6,500 00
	"	" 30, '74	195 00
Lot 17, sq. 158	"	" 30, '74	4,000 00
	"	" 30, '74	120 00
			33,949 57
			33,949 57
W. p't lot 9, sq. 158	Due	May 30, '74	800 00
	"	" 30, '74	96 00
Square 155	"	" 24, '74	1,909 27
	"	Nov. 24, '74	1,909 27
Lots 27 to 29, square 134	"	June 1, '74	3,500 00
	"	" 1, '74	210 00
	"	" 1, '74	210 00
Lots 11 to 25, sq. 195	"	" 3, '74	1,400 00
	"	Dec. 3, '74	1,400 00
Lots in square 151	"	June 4, '74	565 94
	"	Dec. 4, '74	565 94
Lot 3, square 158	"	May 28, '74	2,712 00
	"	" 28, '74	162 72
Lot 8, square 158	"	June 1, '74	1,000 00
	"	" 1, '74	120 00
	"	" 1, '74	1,000 00
	"	" 1, '74	120 00
			*51,630 71
*Less am't ass'd by W. M. Stewart on sq. 113			686 76
Total			$50,943 95

*In red ink in original.

1526 EXHIBIT J. F. O. No. 25. W. T. S. C.

Statement of Ac. Sunderland and Hillyer.

			Dr.	Cr.
1876.				
Dec.	26	By amount due from K. & L., assumed by K. & O.		$18,126 84
	27	To cash p'd Nat. Met. Bank, int. on $25,000	$356 88	
1877.				
Jan.	6	" " " J. M. L., trustee, to pay int. on Riley note	270 00	
Feb'y	5	To cash p'd R. I. Fleming, per order H. A. Willard, int. on sqr. 151	565 94	
	"	To cash p'd Geo. W. Riggs, int.	700 00	
	12	" " " ½ gen. tax (on S. & H. property)	2,583 52	
	"	" " " ½ " " (" T. S. ")	706 47	
	17	" " " d'ft of F. D. Lewis, adm'r, sq. 93	2,000 00	
Apr.	13	" " " J. M. Latta, trustee, to pay int. on sqr. 156	2,000 00	
	"	To commissions on sale to Baker *et al.*, sq. 156	265 00	
June	12	" " getting Gillett release, &c.	5 00	
	"	" cash p'd recording " "	1 25	
	16	" " " F. D. Evans & Bro. (grading)	600 00	
	30	" " " " "	700 00	
	"	" " " Morsell (measurer), "	5 00	
July	2	By " rec'd from Webber & Mack, sq. 92		20 00
"	3	To " p'd telegrams to Latta	1 70	
"	6	" " " B'k Rep., int. on Riley note	270 00	1,000 00
"	9	By " rec'd from Latta		
"	"	To " p'd water taxes	1,472 30	
"	14	" commissions for attending to grading, &c., of sq'rs 156 & 158, & paying taxes	100 00	
	"	To cash p'd F. D. Evans & Bro. (grading)	500 00	
	17	" " " " "	500 00	
Aug.	1	By " rec'd from Webber & Mack, sq. 92		20 00
"	20	To " p'd for certified copy Willard trust	50	
	"	" making trust	5 00	
	24	" cash p'd J. M. Latta, trustee	263 19	
	29	" " " S. T. G. Morsell for measuring	59 51	
Sept.	4	By " rec'd from Webber & Mack, sq. 92		20 00
Oct.	1	" " " " " "		20 00
Nov.	1	" " " " " "		20 00
	2	To " p'd Latta, trustee	80 00	
			14,011 26	19,226 84
		Am't bro't forw'd	14,011 26	19,226 84
Sept.	29	To cash p'd N. L. Jeffries to make deposit on sq. 151	1,000 00	
Oct.	5	To cash p'd N. L. Jeffries to complete purchase sqr. 151	1,500 00	
		*Balance	2,715 58	
			$19,226 84	$19,226 84

*In red ink in original.

Washington, D. C., Nov. 1, 1877.

KILBOURN & OLMSTEAD.

1527 EXHIBIT J. F. O. No. 26. W. T. S. C.

Kilbourn & Olmstead, real estate and note brokers, corner Fifteenth & G streets.

WASHINGTON, D. C., *June 22d*, 1878.

Estimate of Property of Sunderland and Hillyer—Kilbourn.

30	Sqr.	66, of 1 & 2, all 3, 4, 5, 6, 7, & 8	107,360	at	.35
30		67, 3, 4, 5	33,920	"	.35
50		93, all	158,796	"	.50
30		97, S. 18 to 25	20,195	"	.30
		97, of 10	4,515	"	.50
100		115, all	137,525	"	.80
40		134, S. 27 to 49	55,452	"	.35
30		151, S. 17, 18, 19, 23, 24, 27 to 149	238,647½	"	.25
45		155, all	280,655	"	.40
50		156, " (except S. 34)	312,711	"	.50
		158, 3	14,464	"	1.25
		158, 8	8,820	"	.80
		158, of 9 & 10	15,759	"	.75
		158, 17	15,632	"	1.00
		158, of 21	4,132	"	1.25
90		195, 11 to 25	101,045	"	.80

J. F. OLMSTEAD.

1528 EXHIBIT J. F. O. No. 27. W. T. S. C.

Appraisement Property for Messrs. Sunderland & Hillyer.

Sq.	97,	lots on O St., from 18 to 25		40c.
"	67,	" " P St.		35c.
"	66,	about 100,000 ft. (Boundary & K St.)		40c.
				*.35
"	93,	" 160,000 ft. (Conn. Av., 20th, L, & K)		50c.
"	115,	" 138,000 ft. (19th, N. H. Ave., & Circle)		90c.
"	156,	" 300,000 ft.		50c.
"	155,	" 280,000 ft.		40c.
"	151,	" 230,000 ft. (Boundary & Willard)		25c.
"	134,	" 56,000 ft. (Fardon)		20c.
"	195,	" 100,000 ft. (16th St.)		70c.
"	158,	" 60,000 ft. (Mass. Ave. & N St.)		1.25c.
				*1.00

1529 EXHIBIT J. F. O. No. 28. W. T. S. C.

Due S. & H.		3,057 11
" T. S.		16,257 23
		19,314 34
Due fr. C. J. H.		1,183 50
	380,649 87	
	362,524 03	
	18,125 84	18,130 84

*In pencil in original.

DR. *Sunderland and Hillyer in Account Current with Kilbourn and Latta.* CR.

1876.					1876.		
Dec. 27	To cash p'd Nat. Met. Bank int. to Dec. 27 on note of K. & L. (secured by $25,000 gold bonds) $22,000			Dec. 27	By amount balance % from the books of Kilbourn & Latta assumed by Kilbourn & Olmstead		$18,126 84
1877.							
Jan. 6	" " p'd J. M. Latta to pay int. to Riley on sq. 67, % T. S.		$356 88				
Feb'y 5	" " p'd R. I. Fleming on order H. A. Willard six months' int. to Dec. 4, '76, on note of Latta, T., on lots in sqr. 151		270 00				
"	" " p'd G. W. Riggs 1 year'-int. on $10,000 (remaining unpaid of the 40,000 on sqr. 195) to Dec. 8, '76		565 94				
12	" " p'd 1st ½ general taxes, as follows, viz:		700 00				
	Sq. 66, of 1 & 2, all 3, 4, 5, 6, 7, & 8	154 50					
	67, 3, 4, 5	32 03					
	93, all	332 98					
	97, of 10, all S. 18 to 25	34 57					
	115, all	477 73					
	134, S. 27 to 49	79 12					
	155, all	409 76					
	156, "	580 52					

			158, 3, 8, of 9, 10, 17 of 21	182 72							
			195, 11 to 25	299 59							
					2,583 52						
			67, 6. 9, 10, 11, 12, 13, 14, 15, 16, 17, & 19	135 95							
			68, 23	27 76							
			69, 16, 17	15 27							
			92, all	159 49							
			97, of 9	3 53							
			138, of 1, 3 & 4	145 83							
			153, all	208 85							
			177, S. E & F	9 79							
					706 47						
	17	" "	p'd F. D. Lewis, sq. 93		2,000 00						
Apr.	13	" "	" J. M. Latta, trustee, to pay int. on $50,000 on sqr. 156		2,000 00						
	"	" "	commissions on sale S. 34, sqr. 156		265 00						
			Amount carried for'd		$9,447 81				Am't carried for'd		$18,126 84
1877.			Am't bro't for'd		$9,447 81	1877.			Am't bro't for'd		$18,126 84
June	12	To getting release & certificate (Gillet) sqr. 134			6 25	July	2	By cash rec'd from rent sqr. 92			20 00
							9	" " " " J. M. Latta			1,000 00
	15	To cash p'd Evans & Bro. (grading)			600 00	Aug.	1	" " " " rent sq. 92			20 00
						Sept.	1	" " " " " " "			20 00
	30	To cash p'd Evans & Bro. (grading)		700 00		Oct.	1	" " " " " " "			20 00
						Nov.	1	" " " " " " "			20 00
		To cash p'd Morsell, measurer		5 00							
					705 00						
July	2	" " "	telegrams		1 70						
	6	" " "	Nat. Bank Rep., six months' int. to date on note J. M. Latta, trustee, on sqr. 67		270 00						

Sunderland and Hillyer in Account Current with Kilbourn and Latta—Continued.

1877.				
9	To cash p'd T. Lubey, water tax, viz:			
	Sqr. 66, 3,4,5, 3d inst.	$142 26		
	" 93, 14, 2d inst.	64 27		
	" 93,1,15,16,17,4th inst.	157 15		
	" 115, 11, 4th & 5th "	64 47		
	" 115, 5 to 10, 4th "	259 46		
	" 151, S. 139 to 149, 3d inst.	101 32		
	" 151, S. 115 to 138, 3d inst.	179 63		
	" 151, S. 17, 18, 19, 23, 24, 27 to 38, 1st inst.	118 32		
	T. S. " 153,7, 8, 9, 10, 11, 12, 4th inst.	222 28		
	" 158, 3 of 21, 1st inst.	61 32		
	" 195, 11,12, 13, 4th "	78 10		
	" 195, 25, 3d "	23 72		
			1,472 30	
14	To cash p'd Evans & Bro., grading	500 00		
	" commissions attending grading & taxes	100 00		
			600 00	
17	" cash p'd Evans & Bro., grading		500 00	
Aug. 20	" copy deed of trust & certificate, sq. 151		5 50	
" 24	" cash p'd J. M. Latta, trustee, % grading		263 19	
29	" S.T. G. Morsell (measurer)		59 51	
Oct. 1	" cash p'd N. L. Jeffries, deposit sq. 151		1,000 00	

	5	" Republican, advertising, sq. 151			42 00			
	9	" cash p'd N. L. Jeffries, bal. cash payment			1,500 00			
Nov.	2	" cash p'd J. M. Latta, trustee			80 00			
		To bal. %			2,673 58			
					$19,226 84			$19,226 84

[Written diagonally across account:] We admit the correctness of the foregoing statement of account, and do hereby release Mr. James M. Latta from all liability to us or either of us for the balance of ($2,673.58) twenty-six hundred & seventy-three dollars & fifty-eight cents.

[SEAL.] ——— ———.

[SEAL.] ——— ———.

1531 DISTRICT OF COLUMBIA, *ss:*

I, Wm. T. S. Curtis, a notary public in and for said District, do hereby certify that I, as a notary public and pursuant to authority conferred upon me by a commission of the circuit court of the district of Indiana, *I* did begin to take the deposition of John F. Olmstead in the case of Thomas Sunderland *vs.* James M. Latta, pending in said circuit court, on behalf of defendant Latta; but during the continuance of said examination it was stipulated and agreed between counsel for the respective parties that the above-mentioned case be consolidated with the case of Sunderland & Hillyer *vs.* Kilbourn & Olmstead, pending in the supreme court of District of Columbia; that, in pursuance of said consolidation, I was appointed special examiner in said consolidated case of Sunderland & Hillyer *vs.* Kilbourn, Latta and Olmstead, No. 7764, equity, and that, as said examiner, I did cause the said Olmstead to appear before me at the times and places in said deposition specified, and his deposition, after he was duly sworn, was taken down stenographically in my presence, and, after being reduced to writing, was by him signed in my presence. Said examination was made in the presence of counsel

for the respective parties, as will appear by reference to
1532 said deposition.

I do further certify that I am not of counsel for either party, nor am I interested in the final result of the case, nor am I related in any degree to any of the parties.

My fee for taking this deposition and also the rest of testimony for the defence in this case is $363.00, which has been paid by the defendants, and is just and reasonable.

WM. T. S. CURTIS, *Examiner.*

1533 *Statement of General Taxes in Sq's Nos.* 66, 93, 115, 155, 156, *and* 195 *from* 1872–'3 *to* 1876–'77. *Filed Dec.* 23, 1882. *R. J. Meigs, Clerk.*

1534 1872–'73.

Statement of General Taxes in Sq. No. 66.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	35,819	20	7,163	15	5,372	4,000	1 70	377 84	The assessor's book charges that the square contains 145,811 ft., which is wrong.
2	32,790	15	4,918	10	3,279				
3	11,773	10	1,177	10	1,177				
4	10,987	10	1,098	10	1,098				
5	16,741	12	2,008	10	1,674				
6	17,255	20	3,451	15	2,588				
7	9,250	18	1,665	15	1,387				
8	10,938	18	1,968	15	1,640				
	145,553 **145,811**	15¾	23,448	12⅝	18,215 **18,236**	4,000	1 70	377 84 **466 61**	

1873–'74.

Statement of General Taxes in Sq. No. 66—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	35,819	25	8,594	20	7,164	4,000	2 00	517 44	
2	32,790	15	4,919	15	4,919				
3	11,773	12	1,443	05	589				
4	10,987	12	1,318	08	879				
5	16,741	15	2,511	10	1,674				
6	17,255	25	4,314	15	2,588				
7	9,250	22	1,595	15	1,388				
8	10,938	23	2,516	15	1,641				
	145,553	18½	27,540	12⅞	20,842	4,000	2 00	517 44	
	145,811			**15**	**21,872**			**630 80**	

1874–'75.

1	35,819	.....	....	15	5,373	4,000	3 00	774 90	No assessment made, therefore no appeal.
2	32,790	.....	.....	15	4,919				
3	11,773	.....	.....	15	1,766				
4	10,987	.....	.....	15	1,648				
5	16,741	.....	.....	15	2,511				
6	17,255	.....	.....	15	2,584				
7	9,250	.....	.....	15	1,388				
8	10,938	.....	.....	15	1,641				
	145,553	.....	.....	15	21,830	4,000	3 00	774 90	

1535

1875–'76.

			8,955						
1	35,819	25	7,955	.....	7,955	2,500	1 50	543 46	Figures in red ink are correct. (Black face in print.)
2	32,790	18	5,902	.....	5,902	8,000			
3	11,773	15	1,766	.....	1,766				
4	10,987	15	1,648	.....	1,648				
5	16,741	15	2,511	.....	2,511				
			3,451						
6	17,255	20	3,445	.....	3,445				
7	9,250	20	1,850	.....	1,850				
8	10,938	20	2,188	.....	2,188				
	145,553	18⅗	27,265	.....	27,265	10,500	1 50	543 46	

1876–'77.

1	35,819	.....	.....	25	7,955	30,000	1 50	858 98	No assessment made, therefore no appeal.
2	32,790	.....	.....	18	5,902				
3	11,773	.....	.....	15	1,766				
4	10,987	.....	.....	15	1,648				
5	16,741	.....	.....	15	2,511				
6	17,255	.....	....	20	3,445				
7	9,250	.....	.....	20	1,850				
8	10,938	.....	.....	20	2,188				
	145,5-3	.....	.....	18½	27,265	30,000	1 50	858 98	

1536

1872–'73.

Statement of General Taxes in Sy. No. 93.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	8,000	20	1,600	15	1,200				
2	7,775	20	1,555	15	1,166	900	1 70	400 76	
3	8,491	20	1,698	15	1,274	600			
4	8,491	20	1,698	15	1,274				
5	7,775	20	1,555	15	1,166				
6	8,000	20	1,600	15	1,200				
7	6,800	15	1,020	12	816				
8	10,381	15	1,557	12	1,246				
9	10,381	15	1,557	12	1,246				
10	6,900	15	1,035	12	828				
11	8,000	15	1,200	12	960				
12	7,565	15	1,135	12	908				
13	8,182	15	1,227	12	982				
14	18,405	20	3,681	15	2,761				
15	16,469	20	3,294	15	2,470				
16	10,381	20	2,076	15	1,557				
17	6,800	20	1,360	15	1,020				
	158,796	18	28,848	14	22,074	1,500	1 70	400 76	
								400 76	
								515 92	

1873–'74.

1	8,000	30	2,400	25	2,000				
2	7,775	25	1,944	20	1,555	900	2 00	691 56	
3	8,491	25	2,123	20	1,698	600			
4	8,491	25	2,123	20	1,698				
5	7,775	25	1,944	20	1,555				
6	8,000	25	2,400	20	1,600				
7	6,800	25	1,700	20	1,360				
8	10,381	25	2,595	20	2,076				
9	10,381	25	2,595	20	2,076				
10	6,900	25	1,725	20	1,380				
11	8,000	25	2,000	20	1,600				
12	7,565	25	1,891	20	1,513				
13	8,182	25	2,046	20	1,636				
14	18,405	30	5,522	25	4,601				
15	16,469	25	4,117	20	3,294				
16	10,381	25	2,595	20	2,076				
17	6,800	25	1,700	20	1,360				
	158,796	26	41,420	20½	33,078	1,500	2 00	691 56	
								858 40	

1537

1874–'75.

1	8,000	.....	.....	25	2,000				
2	7,775	.....	.....	20	1,555	1,500	3 00	1,037 34	No assessment made.
3	8,491	.....	.....	20	1,698				
4	8,491	.....	.....	20	1,698				
5	7,775	.....	.....	20	1,555				
6	8,000	.....	.....	20	1,600				
7	6,800	.....	.....	20	1,360				
8	10,381	.....	.....	20	2,076				
9	10,381	.....	.....	20	2,076				
10	6,900	.....	.....	20	1,380				
11	8,000	.....	.....	20	1,600				
12	7,565	.....	.....	20	1,513				
13	8,182	.....	.....	20	1,636				
14	18,405	.....	.....	20	4,601				
15	16,469	.....	.....	20	3,294				
16	10,381	.....	.....	20	2,076				
17	6,800	.....	.....	20	1,360				
	158,796	.....	.....	20¾	33,078	1,500	3 00	1,037 34	

1875–'76.

Statement of General Taxes in Sq. No. 93—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	8,000	25	.....	.....	2,000	1,200	1 50	341 93	No appeal taken.
2	7,775	30	.....	.....	2,333	.....	.....	341 92	
3	8,491	30	.....	.....	2,547				
4	8,491	30	.....	.....	2,547				
5	7,775	30	.....	.....	2,332				
6	8,000	30	.....	.....	2,400				
7	6,800	25	.....	.....	1,700				
8	10,381	25	.....	.....	2,595				
9	10,381	25	.....	.....	2,595				
10	6,900	25	.....	.....	1,725				
11	8,000	25	.....	.....	2,000				
12	7,565	25	.....	.....	1,891				
13	8,182	30	.....	.....	2,455				
14	18,405	30	.....	.....	5,522				
15	16,469	30	.....	.....	4,941				
16	10,381	30	.....	.....	3,114				
17	6,800	25	.....	.....	1,700				
	158,796	27 5/8	.....	.....	44,397	1,200	1 50	683 85	

1538 1876–'77.

1	8,000	.....	.....	25	2,000	.....	1 50	332 98	No assessment made.
2	7,775	.....	.....	30	2,333	.....	.....	332 98	Same as in 1875–'76.
3	8,491	.....	.....	30	2,547				
4	8,491	.....	.....	30	2,547				
5	7,775	.....	.....	30	2,332				
6	8,000	.....	.....	30	2,400				
7	6,800	.....	.....	25	1,700				
8	10,381	.....	.....	25	2,595				
9	10,381	.....	.....	25	2,595				
10	6,900	.....	.....	25	1,725				
11	8,000	.....	.....	25	2,000				
12	7,565	.....	.....	25	1,891				
13	8,182	.....	.....	30	2,455				
14	18,405	.....	.....	30	5,522				
15	16,469	.....	.....	30	4,941				
16	10,381	.....	.....	30	3,114				
17	6,800	.....	.....	25	1,700				
	158,796	.....	.....	27 5/8	44,397	.....	1 50	$665 96	

1539 1872–'73.

Statement of General Taxes in Sq. # 115.

1	6,583	25	1,646	20	1,317	400	1 70	368 70	
2	6,800	20	1,360	15	1,020				
3	7,200	20	1,440	15	1,080				
4	6,800	20	1,360	15	1,020				
5	6,583	25	1,646	20	1,317				
6	8,885	20	1,777	15	1,333				
7	16,212	20	3,242	15	2,432				
8	10,158	20	2,032	15	1,524				
9	15,240	20	3,048	15	2,286				
10	10,976	20	2,195	15	1,646				
11	14,586	20	2,917	15	2,228				
12	7,920	20	1,584	15	1,188				
13	10,427	20	2,085	15	1,564				
14	8,885	20	1,777	15	1,333				
	137,255	20 2/3	28,109	15 2/3	21,288	400	1 70	368 70	
								484 65	

1873–'74.

Statement of General Taxes in Sq. # 115—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	6,583	35	2,304	.....	.....	400	2 00	712 96	No appeal taken. Taxes on imp. were not charged.
2	6,800	25	1,700						
3	7,200	25	1,800						
4	6,800	25	1,700						
5	6,583	25	2,304						
6	8,885	25	2,222						
7	16,212	25	4,053						
8	10,158	25	2,539						
9	15,240	25	3,810						
10	10,976	25	2,744						
11	14,586	25	3,714						
12	7,920	25	1,930						
13	10,427	25	2,607						
14	8,885	25	2,221						
	137,255	26 3-7	35,648	.....	.....	400	2 00	712 96	

1540

1874–'75.

1	6,583	.....	.....	35	2,304	4 00	3 00	1,081 44	No assessment made.
2	6,800	.....	.....	25	1,700				
3	7,200	.....	.....	25	1,800				
4	6,800	.....	.....	25	1,700				
5	6,583	.....	.....	35	2,304				
6	8,885	.....	.....	25	2,222				
7	16,212	.....	.....	25	4,053				
8	10,158	.....	.....	25	2,539				
9	15,240	.....	.....	25	3,810				
10	10,976	.....	.....	25	2,744				
11	14,586	.....	.....	25	3,714				
12	7,920	.....	.....	25	1,930				
13	10,427	.....	.....	25	2,607				
14	8,885	.....	.....	25	2,221				
	137,255	.....	.....	26 3-7	35,648	4 00	3 00	1,081 44	

1875–'76.

1	6,583	65	4,279	50	3,292	.....	1 50	477 73	
2	6,800	45	3,060	45	3,060	.....	.....	477 72	
3	7,200	45	3,240	45	3,240				
4	6,800	45	3,060	45	3,060				
5	6,583	50	3,292	50	3,292				
6	8,885	40	3,554	35	3,110				
7	16,212	40	6,485	35	5,674				
8	10,158	40	4,063	35	3,555				
9	15,240	60	9,144	50	7,620				
10	10,976	60	6,586	50	5,488				
11	14,586	65	9,656	65	9,656				
12	7,920	60	4,752	50	3,960				
13	10,427	60	6,256	45	4,692				
14	8,885	60	5,331	45	3,998				
	137,255	52½	72,758	46	63,697	.....	1 50	955 45 **1,091 37**	

1541

1876–'77.

Statement of General Taxes in Sq. No. 115—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	6,583	.....	.....	50	3,292	.....	1 50	955 46	No assessment made.
2	6,800	.....	.....	45	3,060				
3	7,200	.....	.....	45	3,240				
4	6,800	.....	.....	45	3,060				
5	6,583	.....	.....	50	3,292				
6	8,885	.....	.....	35	3,110				
7	16,212	.....	.....	35	5,674				
8	10,158	.....	.....	35	3,555				
9	15,240	.....	.....	50	7,620				
10	10,976	.....	.....	50	5,488				
11	14,586	.....	.....	65	9,656				
12	7,920	.....	.....	50	3,960				
13	10,427	.....	.....	45	4,692				
14	8,885	.....	.....	45	3,998				
	137,255	.....	.....	46	63,697	.....	1 50	955 46	

1542

1872–'73.

Statement of General Taxes in Sq. No. 155.

1	10,000	35	3,500	30	3,000	.....	1 70	988 06	
2	7,520	30	2,256	25	1,880				
3	13,860	28	3,881	20	2,772				
4	13,860	28	3,881	20	2,772				
5	13,860	28	3,881	20	2,772				
6	13,860	28	3,881	20	2,772				
7	6,900	30	2,070	25	1,725				
8	6,900	30	2,070	25	1,725				
9	35,538	30	10,661	25	8,884				
10	15,484	25	3,871	20	3,097				
11	13,637	25	3,409	20	2,727				
12	22,916	25	5,729	20	4,583				
13	13,860	20	2,772	15	2,079				
14	13,860	20	2,772	15	2,079				
15	13,860	20	2,772	15	2,079				
16	13,860	20	2,772	15	2,079				
17	7,520	25	1,880	20	1,504				
18	10,000	30	3,000	25	2,500				
19	8,100	25	2,045	20	1,636				
20	8,500	25	2,125	20	1,700				
21	8,500	25	2,125	20	1,700				
22	8,180	28	2,290	25	2,045				
	280,655	26 1/3	73,643	21	58,110	.....	1 70	988 06	
								1,251 93	

1543 1873-'74.

Statement of General Taxes in Sq. No. 155—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	10,000	40	4,000	35	3,500	.....	2 00	1,399 42	
2	7,520	30	2,256	25	1,880				
3	13,860	30	4,158	25	3,465				
4	13,860	30	4,158	25	3,465				
5	13,860	30	4,158	25	3,465				
6	13,860	30	4,158	25	3,465				
7	6,900	30	2,070	25	1,725				
8	6,900	30	2,070	25	1,725				
9	35,538	35	12,438	30	10,661				
10	15,484	30	4,645	25	3,871				
11	13,637	30	4,091	25	3,419				
12	22,916	30	6,875	25	5,754				
13	13,860	25	3,465	20	2,772				
14	13,860	25	3,465	20	2,772				
15	13,860	25	3,465	20	2,772				
16	13,860	25	3,464	20	2,772				
17	7,520	30	2,256	25	1,880				
18	10,000	40	4,000	35	3,500				
19	8,180	25	2,045	20	1,663				
20	8,500	25	2,125	20	1,700				
21	8,500	25	2,125	20	1,700				
22	8,180	30	2,454	25	2,045				
	280,655	29½	83,942	24½	69,971	.....	2 00	1,399 42 **1,678 84**	

1544 1874-'75.

1	10,000	.....	.....	35	3,500	.....	3 00	2,099 13	No assessment made.
2	7,520	.....	.....	25	1,880				
3	13,860	.....	.....	25	3,465				
4	13,860	.....	.....	25	3,465				
5	13,860	.....	.....	25	3,465				
6	13,860	.....	.....	25	3,465				
7	6,900	.....	.....	25	1,725				
8	6,900	.....	.....	25	1,725				
9	35,538	.....	.....	30	10,661				
10	15,484	.....	.....	25	3,871				
11	13,637	.....	.....	25	3,419				
12	22,916	.....	.....	25	5,754				
13	13,860	.....	.....	20	2,772				
14	13,860	.....	.....	20	2,772				
15	13,860	.....	.....	20	2,772				
16	13,860	.....	.....	20	2,772				
17	7,520	.....	.....	25	1,880				
18	10,000	.....	.....	35	3,500				
19	8,180	.....	.....	20	1,663				
20	8,500	.....	.....	20	1,700				
21	8,500	.....	.....	20	1,700				
22	8,180	.....	.....	25	2,045				
	280,655	.....	.....	24½	69,971	.....	3	2,099 13	

1545 1875–'76.

Statement of General Taxes in Sq. No. 155—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	10,000	30	3,000	30	3,000	.....	1 50	409 76	
2	7,520	25	1,880	25	1,880	.....	.....	409 75	
3	13,860	20	2,772	15	2,079				
4	13,860	20	2,772	15	2,079				
5	13,860	20	2,772	15	2,079				
6	13,860	20	2,772	15	2,079				
7	6,900	25	1,725	25	1,725				
8	6,900	25	1,725	25	1,725				
9	35,538	30	10,661	25	8,885				
10	15,484	20	3,097	18	3,067				
11	13,637	20	2,727	18	2,461				
12	22,916	20	4,583	20	4,583				
13	13,860	20	2,772	15	2,079				
14	13,860	20	2,772	15	2,079				
15	13,860	20	2,772	15	2,079				
16	13,860	20	2,772	15	2,079				
17	7,520	25	1,880	20	1,504				
18	10,000	30	3,000	25	2,500				
19	8,180	20	1,636	20	1,636				
20	8,500	20	1,700	20	1,700				
21	8,500	20	1,700	20	1,700				
22	8,180	20	1,636	20	1,636				
	280,655	22 1-5	63,126	19⅘	54,634	.....	.....	819 51 **946 89**	

1546 1876–'77.

1	10,000	.....	....	30	3,000	.....	1 50	409 76	No assessment made.
2	7,520	.....	.....	25	1,880	.....	.....	409 76	
3	13,860	.....	.....	15	2,079				
4	13,860	.....	.....	15	2,079				
5	13,860	.....	.....	15	2,079				
6	13,860	.....	.....	15	2,079				
7	6,900	.....	.....	25	1,725				
8	6,900	.....	.....	25	1,725				
9	35,538	.....	.....	25	8,885				
10	15,484	.....	.....	18	3,067				
11	13,637	.....	.....	18	2,461				
12	22,916	.....	.....	20	4,583				
13	13,860	.....	.....	15	2,079				
14	13,860	.....	.....	15	2,079				
15	13,860	.....	.....	15	2,079				
16	13,860	.....	.....	15	2,079				
17	7,520	.....	.....	20	1,504				
18	10,000	.....	....	25	2,500				
19	8,180	.....	.....	20	1,636				
20	8,500	.....	.....	20	1,700				
21	8,500	.....	.....	20	1,700				
22	8,180	.....	.....	20	1,636				
	280,655	.....	.....	19½	54,634	.....	.....	819 52	

1547 1872–'73.

Statement of General Taxes in Sq. No. 156.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	10,000	35	3,500	25	2,500	.....	1 70	479 28	Taxes on lots 1-20, inc., not paid, amounting, in sum total, $735.08.
2	7,080	30	2,124	22	1,558				
3	12,390	28	3,469	20	2,478				
4	12,390	28	3,469	20	2,478				
5	12,390	28	3,469	20	2,478				
6	12,390	28	3,469	20	2,478				
7	12,390	28	3,469	20	2,478				
8	12,390	28	3,469	20	2,478				
9	12,390	28	3,469	20	2,478				
10	12,390	28	3,469	20	2,478				
11	7,080	30	2,124	25	1,770				
12	10,000	33	3,300	30	3,000				
13	7,482	25	1,871	20	1,496				
14	8,062	25	2,016	20	1,612				
15	8,062	25	2,016	20	1,612				
16	7,482	25	1,871	20	1,496				
17	10,000	25	2,500	20	2,000				
18	7,089	25	1,770	20	1,416				
19	12,390	25	3,098	20	2,478				
20	12,390	25	3,098	20	2,478				
21	12,390	25	3,098	20	2,478				
22	12,390	25	3,098	20	2,478				479 28
23	12,390	27	3,345	22	2,726				**735 08**
24	12,390	27	3,345	22	2,726				**1,214 36**
25	12,390	27	3,345	22	2,726				
26	12,390	27	3,345	22	2,727				
27	7,080	27	1,912	22	1,558				
28	10,000	35	3,500	30	3,000				
29	7,482	30	2,245	25	1,871				
30	8,062	30	2,419	25	2,016				
31	8,062	30	2,419	25	2,016				
32	7,482	30	2,245	25	1,871				
	328,936	28	91,356	22	71,433	.....	1 70	479 28	
								1,553 05	

1548 1873–'74.

1	10,000	40	4,000	35	3,500	.....	2 00	1,805 76	
2	7,080	35	2,478	30	2,124				
3	12,390	30	3,717	25	3,098				
4	12,390	30	3,717	25	3,098				
5	12,390	30	3,717	25	3,098				
6	12,390	30	3,717	25	3,098				
7	12,390	30	3,717	25	3,098				
8	12,390	30	3,717	25	3,098				
9	12,390	30	3,717	25	3,098				
10	12,390	30	3,717	25	3,098				
11	7,080	35	2,478	30	2,124				
12	10,000	40	4,000	35	3,500				
13	7,482	30	2,245	25	1,871				
14	8,062	30	2,419	25	2,016				
15	8,062	30	2,419	25	2,016				
16	7,482	30	2,245	25	1,871				
17	10,000	30	3,000	25	2,500				
18	7,080	30	2,124	25	1,770				
19	12,390	30	3,717	25	3,098				
20	12,390	30	3,717	25	3,098				
21	12,390	30	3,717	25	3,098				
22	12,390	30	3,717	25	3,098				
23	12,390	35	4,337	30	3,717				
24	12,390	35	4,337	30	3,717				
25	12,390	35	4,337	30	3,717				
26	12,390	35	4,337	30	3,717				
27	7,080	35	2,478	30	2,124				
28	10,000	40	4,000	35	3,500				
29	7,482	35	2,619	30	2,245				
30	8,062	35	2,822	30	2,419				
31	8,062	35	2,822	30	2,419				
32	7,482	35	2,619	30	2,245				
	328,936	32 5/8	108,720	27 5/8	90,288	.....	2	1,805 76	
								2,174 40	

1549 1874–'75.

Statement of General Taxes in Sq. No. 156—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	10,000	.....	.....	35	3,500	.....	3 00	2,708 64	No assessment made.
2	7,080	.....	.....	30	2,124				
3	12,390	.....	.....	25	3,098				
4	12,390	.....	.....	25	3,098				
5	12,890	.....	.....	25	3,098				
6	12,390	.....	.....	25	3,098				
7	12,390	.....	.....	25	3,098				
8	12,390	.....	.....	25	3,098				
9	12,390	.....	.....	25	3,098				
10	12,390	.....	.....	25	3,098				
11	7,080	.....	.....	30	2,124				
12	10,000	.....	.....	35	3,500				
13	7,482	.....	.....	25	1,871				
14	8,062	.....	.....	25	2,016				
15	8,062	.....	.....	25	2,016				
16	7,482	.....	.....	25	1,871				
17	10,000	.....	.....	25	2,500				
18	7,080	.....	.....	25	1,770				
19	12,390	.....	.....	25	3,098				
20	12,390	.....	.....	25	3,098				
21	12,390	.....	.....	25	3,098				
22	12,390	.....	.....	25	3,098				
23	12,390	.....	.....	30	3,717				
24	12,390	.....	.....	30	3,717				
25	12,390	.....	.....	30	3,717				
26	12,390	.....	.....	30	3,717				
27	7,080	.....	.....	30	2,124				
28	10,000	.....	.....	35	3,500				
29	7,482	.....	.....	30	2,245				
30	8,062	.....	.....	30	2,419				
31	8,062	.....	.....	30	2,419				
32	7,482	.....	.....	30	2,245				
	328,936	.....	.....	27½	90,288	.....	3	2,708 64	

1550 1875–'76.

1	10,000	35	3,500	35	3,500	.....	1 50	580 52	
2	7,080	30	2,124	30	2,124	.....	.....	580 52	
3	12,390	25	3,098	20	2,478				
4	12,390	25	3,098	20	2,478				
5	12,390	25	3,098	20	2,478				
6	12,390	25	3,098	20	2,478				
7	12,390	20	2,478	20	2,478				
8	12,390	20	2,478	20	2,478				
9	12,390	25	3,098	25	3,098				
10	12,390	25	3,098	25	3,098				
11	7,080	30	2,124	30	2,124				
12	10,000	35	3,500	35	3,500				
13	7,482	25	1,871	25	1,871				
14	8,062	25	2,016	25	2,016				
15	8,062	25	2,016	25	2,016				
16	7,482	20	1,495	20	1,495				
17	10,000	20	2,000	20	2,000				
18	7,080	25	1,770	20	1,416				
19	12,390	20	2,478	20	2,478				
20	12,390	20	2,478	20	2,478				
21	12,390	20	2,478	20	2,478				
22	12,390	20	2,478	20	2,478				
23	12,390	25	3,098	20	2,478				
24	12,390	25	3,098	20	2,478				
25	12,390	25	3,098	20	2,478				
26	12,390	25	3,098	20	2,478				
27	7,080	30	2,124	30	2,124				
28	10,000	35	3,500	30	3,000				
29	7,482	30	2,245	30	2,245				
30	8,062	30	2,419	30	2,419				
31	8,062	30	2,419	30	2,419				
32	7,482	30	2,245	30	2,245				
	328,936	25⅝	83,216	24¼	77,402	.....	1 50	1,161 03	
								1,248 24	

1551 1876-'77.

Statement of General Taxes in Sq. No. 156—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
1	10,000	.....	.....	35	3,500	.....	1 50	42 18	No assessment made.
2	7,080	.....	.....	30	2,124	.....	.....	42 18	
3	12,390	.....	.....	20	2,478	.....	.....	538 34	
4	12,390	.....	.....	20	2,478	.....	.....	538 34	
5	12,390	.....	.....	20	2,478				
6	12,390	.....	.....	20	2,478				
7	12,390	.....	.....	20	2,478				
8	12,390	.....	.....	20	2,478				
9	12,390	.....	.....	25	3,098				
10	12,390	.....	.....	25	3,098				
11	7,080	.....	.....	30	2,124				
12	10,000	.....	.....	35	3,500				
13	7,482	.....	.....	25	1,871				
14	8,062	.....	.....	25	2,016				
15	8,062	.....	.....	25	2,016				
16	7,482	.....	.....	20	1,495				
17	10,000	.....	.....	20	2,000				
18	7,080	.....	.....	20	1,416				
19	12,390	.....	.....	20	2,478				
20	12,390	.....	.....	20	2,478				
21	12,390	.....	.....	20	2,478				
22	12,390	.....	.....	20	2,478				
23	12,390	.....	.....	20	2,478				
24	12,390	.....	.....	20	2,478				
25	12,390	.....	.....	20	2,478				
26	12,390	.....	.....	20	2,478				
27	7,080	.....	.....	30	2,124				
28	10,000	.....	.....	30	3,000				
29	7,482	.....	.....	30	2,245				
30	8,062	.....	.....	30	2,419				
31	8,062	.....	.....	30	2,419				
32	7,482	.....	.....	30	2,245				
	328,936	.....	.....	24 1/4	77,402	.....	1 50	1,161 04	

1552 1872-'73.

Statement of General Taxes in N. Half Sq. 195.

11	7,310	40	2,924	35	2,559	.....	1 70	542 98	
12	7,310	40	2,924	35	2,559				
13	6,075	50	3,038	45	2,734				
14	6,475	40	2,590	35	2,266				
15	6,420	40	2,568	35	2,247				
16	6,420	40	2,568	35	2,247				
17	6,475	40	2,590	35	2,266				
18	6,075	55	3,341	50	3,038				
19	7,310	40	2,924	35	2,559				
20	7,310	40	2,924	35	2,559				
21	6,075	40	2,430	55	3,038				
22	6,475	20	1,295	15	971				
23	6,420	20	1,284	15	963				
24	6,420	20	1,284	15	963				
25	6,475	20	1,295	15	971				
	99,045	36 1/3	35,979	31 1/3	31,940	.....	1 70	542 98	
								611 64	

1873–'74.

Statement of General Taxes in N. Half Sq. 195—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
11	7,310	45	3,290	40	2,924	500	2 00	760 88	
12	7,310	45	3,290	40	2,954				
13	6,075	40	2,430	35	2,126				
14	6,475	40	2,590	35	2,266				
15	6,420	40	2,568	35	2,247				
16	6,420	40	2,568	35	2,247			(**770 48**)	The correct am't.
17	6,475	40	2,590	35	2,266				
18	6,075	45	2,734	40	2,430				
19	7,310	45	3,290	40	2,924				
20	7,310	45	3,290	40	2,924				
21	6,075	45	2,734	40	2,430				
22	6,475	45	2,914	40	2,590				
23	6,420	45	2,889	40	2,568				
24	6,420	45	2,889	40	2,568				
25	6,475	45	2,914	40	2,590				
	99,045	43 1/3	42,980	38 1/3	38,024	500	2 00	760 88 **869 60**	

1553

1874–'75.

11	7,310	.....	.....	40	2,924	500	300	846 24	No assessment made.
12	7,310	.....	.....	40	2,924	.....	.....	309 48	
13	6,075	.....	.....	35	2,126				
14	6,475	.....	.....	35	2,266				
15	6,420	.....	.....	35	2,247				
16	6,420	.....	.....	35	2,247				
17	6,475	.....	.....	35	2,266				
18	6,075	.....	.....	40	2,430				
19	7,310	.....	.....	40	2,924				
20	7,310	.....	.....	40	2,924				
21	6,075	.....	.....	40	2,430				
22	6,475	.....	.....	40	2,590				
23	6,420	.....	.....	40	2,568				
24	6,420	.....	.....	40	2,568				
25	6,475	.....	.....	40	2,590				
	99,045	.....	.....	38 1/3	38,024	500	.....	1,155 72	

11	7,310	40	2,924	40	2,924				
12	7,310	40	2,924	40	2,924				
13	6,075	50	3,038	50	3,038				
14	6,475	40	2,914	40	2,914				
15	6,420	40	2,889	40	2,889				
16	6,420	40	2,889	40	2,889				
17	6,475	40	2,914	40	2,914				
18	6,075	50	3,038	50	3,038				
19	7,310	40	2,924	40	2,924				
20	7,310	40	2,924	40	2,924				
21	6,075	40	2,430	40	2,430				
22	6,475	35	2,270	30	1,943				
23	6,420	35	2,247	30	1,926				
24	6,420	35	2,247	30	1,926				
25	6,475	35	2,270	30	1,943				
	99,045	40	40,842	38 2/3	39,546	400	1 50	599 19 **618 63**	

1554

1876–'77.

Statement of General Taxes in No. Half Sq. No. 95—Continued.

Lot.	No. of feet.	Ass't val. per foot.	Total.	Appeal val. per foot.	Total val. of lot.	Value of imp.	Rate.	Am't of taxes paid.	Remarks.
11	7,310	.....	.....	40	2,924	400	1 50	299 59	No assessment.
12	7,310	.....	.....	40	2,924	.....	.....	299 60	
13	6,075	.....	.....	50	3,038				
14	6,475	.....	.....	40	2,914				
15	6,420	.....	.....	40	2,889				
16	6,420	.....	.....	40	2,889				
17	6,475	.....	.....	40	2,914				
18	6,075	.....	.....	50	3,038				
19	7,310	.....	.....	40	2,924				
20	7,310	.....	.....	40	2,924				
21	6,075	.....	.....	40	2,430				
22	6,475	.....	.....	30	1,943				
23	6,420	.....	.....	30	1,926				
24	6,420	.....	.....	30	1,926				
25	6,475	.....	.....	30	1,943				
	99,045	.....	.....	38⅔	39,546	400	1 50	599 15	

1555

1872–'73.

Statement of General Taxes in Sq. 97.

10	4,515	20	903	15	777	300	1 70	51 49	
18	2,733	20	546	15	410	.....	.....	18 31	
19	2,733	20	546	15	410				
20	2,733	20	546	15	410				
21	2,733	20	546	15	410				
22	2,733	20	546	15	410				
23	2,733	20	546	15	410				
24	1,974	.....	394	15	296				
25	1,823	20	364	15	273				
	24,710	20	4,937	15	3,806	300	1 70	69 80	
								89 02	

1873–'74.

10	4,515	25	1,154	25	1,154	.....	2	23 08	
18	2,733	18	492	15	410	.....	.....	60 58	
19	2,733	18	492	15	410				
20	2,733	18	492	15	410				
21	2,733	18	492	15	410				
22	2,733	18	492	15	410				
23	2,733	18	492	15	410				
24	1,974	18	365	15	296				
25	1,823	18	328	15	273				
	24,710	19	4,799	16	4,183	.....	2	83 66	
								95 98	

1874–'75..... No assessment.
1875–'76..... No appeal.
1876–'77..... No assessment.

1556 1872–'73.

Statement of General Taxes in Sq. 151.

No. lot.	No. feet.	Ass't val.	Total.	Appeal val.	Val. of lot.	Val. of imp.	Rate.	Am't taxes p'd.	Remarks.
17–18	4,000	20	800	.....	800	.....	1 70	478 90	
19	1,987	20	397	.....	397				
23–24	4,000	20	800	.....	800				
27–30	8,000	20	1,600	.....	1,600				
31	2,100	20	420	.....	420				
32–37	13,200	20	2,640	.....	2,640				
38	2,200	20	440	.....	440				
39	1,760	15	264	10	176				
40–45	10,560	12	1,267	10	1,056				
46	1,680	12	201	10	168				
47–56	16,000	12	1,920	10	1,600				
57–58	3,174	12	380	10	317				
59–68	16,000	12	1,920	10	1,600				
69	1,680	12	201	10	168				
70–75	10,560	12	1,267	10	1,056				
76–77	3,520	15	528	9	317				
78–83	10,560	12	1,267	8	845				
84	1,680	12	201	8	134				
85–94	16,000	12	1,920	8	1,480				
95–96	3,174	12	380	8	254				
97–106	16,000	12	1,920	8	1,480				
107	1,680	12	201	8	134				
108–113	10,020	12	1,202	8	802				
114	1,670	15	255	8	133				
115	2,200	25	550	12	264				
116–121	13,200	20	2,640	12	1,584				
122	2,100	20	420	12	252				
123–132	20,000	20	4,000	12	2,400				
133–134	3,974	20	794	12	476				
135–145	23,100	20	4,620	12	2,772				
146–148	6,600	20	1,320	12	792				
149	6,830	20	1,366	12	820				
	239,209	16⅔	38,101	12½	28,177	.....	1 70	478 90 **647 71**	

1557 1873–'74.

Statement of General Taxes in Sq. 151—Continued.

No. lot.	No. of feet.	Ass't val.	Total.	Appeal val.	Value of lot.	Val. of imp.	Rate.	Am't taxes paid.	Remarks.
17–18	4,000	25	1,000	20	800	.....	2 00	706 66	Taxes do not appear to be paid on lots 17, 18, & 19 for this year.
19	1,987	25	496	20	397				
23–24	4,000	25	1,000	20	800				
27–30	8,000	25	2,000	20	1,600				
31	2,500	25	525	20	420				
32–37	13,200	25	3,300	20	2,640				
38	2,200	25	550	20	440				
39	1,760	25	440	20	352				
40–45	10,560	20	2,112	15	1,584				
46	1,680	20	336	15	252				
47–56	16,000	20	3,200	15	2,400				
57–58	3,174	20	634	15	476				
59–68	16,000	20	3,200	15	2,400				
69	1,680	20	336	15	252				
70–75	10,560	20	2,112	15	1,584				
76–77	3,520	25	880	20	704				
78–83	10,560	20	2,112	15	1,584				
84	1,680	20	336	15	252				
85–94	16,000	20	3,200	15	2,400				
95–96	3,174	20	634	15	476				
97–106	16,000	20	3,200	15	2,400				
107	1,680	20	336	15	252				
108–113	10,020	20	2,004	15	1,503				
114	1,670	25	417	20	334				
115	2,200	25	550	20	440				
116–121	13,200	20	2,640	15	1,980				
122	2,100	20	420	15	315				
123–132	20,000	20	4,000	15	3,000				
133–134	3,974	20	794	15	596				
135–145	23,100	20	4,620	15	3,465				
146–148	6,600	20	1,320	15	990				
149	6,830	25	1,707	20	1,336				
	239,209	22	50,351	17	$38,454	.....	2 00	706 66 **1,007 03**	**$769 08**

1874–'75..... No assessment.
1875–'76..... No appeal.
1876–'77..... No assessment.

1558 1872–'73.

Statement of General Taxes in Sq. 158.

No. lot.	No. of feet.	Ass't val.	Total.	Appeal val.	Value of lot.	Value of imp.	Rate.	Am't of taxes p'd.	Remarks.
3	14,446	22	3,178	20	2,893	.....	1 70	70 69	Taxes on lot of 21 not paid.
8	8,820	18	1,587	15	1,323	.....	.....	14 47	
10	10,086	18	1,815	15	1,513	.....	.....	25 72	
W. p't 9	5,673	18	1,021	15	851	.....	.....	49 18	
Of 21	4,133	25	689	25	689	200	.....	22 49	
17	16,632	25	4,158	25	4,158				
	59,790	21	12,448	19	$11,427	200	1 70	182 55 **211 61**	**$194 25** **211 61**

1873–'74..... No appeal.
1874–'75..... " assessment.
1875–'76..... " appeal.
1876–'77..... " assessment.

1559

1872–'73.

Statement of General Taxes in Sq. 67.

No. of lot.	No. of feet.	Ass't val.	Total.	Appeal val.	Value of lot.	Val. of imp.	Rate.	Am't of taxes p'd.	Remarks.
3	10,910	15	1,636	10	1,091	.....	1 70	67 86	
4	12,060	15	1,809	10	1,206				
5	10,950	15	1,642	10	1,095	600			
	33,920	15	5,087	10	3,392	600	1 70	67 86 **96 67**	

1873–'74.

3	10,910	15	1,636	12	1,310	.....	2 00	93 42	
4	12,060	15	1,809	12	1,447				
5	10,950	15	1,642	12	1,314	600			
	33,920	15	5,087	12	4,071	600	2 00	93 42 **113 74**	

1874–'75.

3	.....	.....	.....	.....	.....	.....	.....	.....	No assessment.
4	.....	.....	.....	.....	.....	.....	.....	.....	
5	.....	.....	.....	.....	.....	.....	.....	.....	

1875–'76.

3	10,910	12	1,310	.....	.....	.....	1 50	.....	No appeal. Taxes paid.
4	12,060	12	1,447						
5	10,950	12	1,314						
	33,920	12	4,071	.....	.....	.....	1 50		

1876–'77.

3	.....	.....	.....	.....	.....	.....	.....	.....	No assessment.
4	.....	.....	.....	.....	.....	.....	.....	.....	
5	.....	.....	.....	.....	.....	.....	.....	.....	

1560				
Sq. 66	Ass't value	1872–'73	466 66	
	Appeal "		377 84	
				88 82
"	Ass't value	1873–'74	630 80	
"	Appeal "		517 44	
				113 36
Sq. 93	Ass't value	1872–'73	515 92	
	Appeal "		400 76	
				115 16
"	Ass't value	1873–'74	858 40	
	Appeal "		691 56	
				167 84
Sq. 115	Ass't value	1872–'73	484 65	
	Appeal "		368 70	
				115 95
"	Ass't value	1875–'76	1,091 37	
	Appeal "		955 45	
				135 92
Sq. 155	Ass't value	1872–'73	1,251 93	
	Appeal "		988 06	
				263 87
"	Ass't value	1873–'74	1,678 84	
	Appeal "		1,399 42	
				279 42
"	Ass't value	1875–'76	946 89	
	Appeal "		819 51	
				127 38
Sq. 156	Ass't value	1872–'73	1,553 05	
	Appeal "		1,214 36	
				338 69
"	Ass't value	1873–'74	2,174 40	
	Appeal "		1,805 76	
				368 64
"	Ass't value	1875–'76	1,248 24	
	Appeal "		1,161 03	
				87 21
Sq. 195	Ass't value	1872–'73	611 64	
	Appeal "		542 98	
				68 66
	Forward			2,270 92
1561	Brought forw'd			$2,270 92
Sq. 195	Ass't value	1873–'74	869 60	
	Appeal "		770 48	
				99 12
	Ass't value	1875–'76	618 63	
	Appeal "		599 19	
				19 44
Sq. 97	Ass't value	1872–'73	89 02	
	Appeal "		69 80	
				19 22
"	Ass't value	1873–'74	95 98	
	Appeal "		83 66	
				12 32
Sq. 151	Ass't value	1872–'73	647 71	
	Appeal "		478 90	
				168 81
"	Ass't value	1873–'74	1,007 02	
	Appeal "		769 08	
				237 94
Sq. 158	Ass't value	1872–'73	211 61	
	Appeal "		194 25	
				17 36

Sq. 73	Ass't value	1872-'73	96 67	
	Appeal "		67 86	
				28 81
	Ass't value	1873-'74	113 74	
	Appeal "		93 42	
				20 32
	Total reduction			$2,894 26

1561½ *Depositions for Compla-nants in Rebuttal. Filled Dec.* 23, 1882. *R. J. —, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and CURTIS J. HILLYER *vs.* HALLET KILBOURN, JAMES M. LATTA, and J. F. OLMSTEAD. } Equity, 7764.

13 witnesses.

WM. F. S. CURTIS, *Examiner.*

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1562 *Deposition on Behalf of Complainants — Rebuttal.*

Met at office of J. F. Olmstead, New York Ave., Washington, D. C., July 19, 1882, at 3 p. m., pursuant to adjournment.

Present: C. J. Hillyer & J. H. Ralston, for complainants.

No counsel appeared for the defence, Mr. Olmstead alone appearing.

THOMAS SUNDERLAND, being recalled — rebuttal, testified as follows:

Examined by C. J. HILLYER:

1 Q. Mr. Sunderland, in the account which is in evidence and which was rendered to you individually in 1878——

Mr. Olmstead at this point interrupted the witness and said: You will allow any objections to this testimony as to the competency of this testimony.

Mr. HILLYER: Objections to the competency or not will be allowed at any time.

2 Q. There appears an entry of a charge of one thousand ($1,000) dollars for commissions on the sale of the Stewart house, under date of November 29, 1875. Do you know anything for what that charge is for?

A. Nothing except from the account and what I was told.

1563 That was after the account was rendered by some one of the defendants. I do not remember which one.

2½ Q. When you speak of the rendition of the account you mean in 1878?

A. In 1878; yes, sir.

3 Q. Did you ever know anything of such a charge having been made prior to that time?

A. I never knew a word of it until I got the account.

4 Q. Do you know of any reason for making such a charge?

A. I do not.

5 Q. Did the firm of Kilbourn & Latta ever sell any house for you?

A. They never did.

6 Q. Did they ever have a right to charge you commissions in any way?

A. I never authorized the defendants to sell any house in the city or anywhere else. I never agreed to pay commissions on the sale of Stewart's house or any other house. The subjects of commissions on the sale of the house referred to was never mentioned to me until the account was rendered.

7 Q. Did you ever own any interest in the Stewart house?

A. None whatever.

1564 8 Q. Did you ever receive any of the proceeds of the sale of the Stewart house?

A. None whatever.

9 Q. So far as you know, then, the charge is a pure fabrication, is it—I will put it, a pure gratuity?

Obj.—Mr. OLMSTEAD: I object to that question as putting words in the witness'*es* mouth, and fairly leading.

A. It was a mere gratuity, wholly without my consent or knowledge.

Mr. HILLYER: That is all for the present.

Mr. OLMSTEAD (to witness): Judge, are you going to be here for some time. We wish to reserve the right of cross-examination.

A. I shall be here for some time.

Resumption of Mr. SUNDERLAND's examination.

By Col. HILLYER:

1 Q. Mr. Sunderland, what time in 1878 did you and Mr. Hillyer arrive in Washington from the Pacific coast?

A. June the 17th.

2 Q. How are you able to fix that date?

A. The particular date accords with my general recollection. I fix it from the register in Welcker's Hotel.

Mr. OLMSTEAD: Where?

A. Welcker's. On my arrival here I went immediately to Welcker's and registered there.

1565 3 Q. How long after your arrival here was it before any accounts were presented or received by yourself and Mr. Hillyer?

Mr. OLMSTEAD (interrupting): That firm was not in existence then.

A. I can answer that better by relating what Mr. Hillyer and myself did before we received an account. On the second or third day after our arrival we called on the defendants, Kilbourn and Olmstead, and requested the delivery to us of their accounts. I think it was after that we called on Mr. Latta for the same purpose. Our principal object in making the visits was to divide our bank property, and also to settle the accounts of the defendants and the accounts between ourselves. Preparatory to dividing the property we got an assessment of values by Mr. John A. Evans, and also one made out by Mr. Olmstead, which contained some slight changes, made on the same paper, by Mr. Kilbourn. After getting those estimates Mr. Hillyer and I made an estimate of our own, and upon that estimate which we made, assisted by the estimate made by Evans, Olmstead, and Kilbourn, we agreed upon a division
1566 of our property. We were some days in coming to an agreement in that division, and it was after that division was made we got the accounts, first from Kilbourn and Olmstead, and next from Latta. I should think it must have been at least ten or twelve days after our arrival before we received the accounts.

4 Q. Have you any method of fixing accurately when we got the estimate from Mr. Olmstead?

A. I have; perhaps not the exact day we got the estimate from Mr. Olmstead, but I think it was simultaneous with getting the estimate from Mr. Evans; it may have been a day previous or after.

5 Q. Have you one of those estimates dated?

A. The estimate made by Mr. Evans is dated.

6 Q. What is the date of it?

A. The estimate made by Mr. Olmstead, 22nd June, 1878.

7 Q. Are you confident that some of these accounts were received before the division of the property?

A. I feel quite confident of it. Yes.

8 Q. Can you speak with absolute confidence with reference to these accounts having been received before the date of the
1567 estimate which you have read?

A. I know they were not received before that.

9 Q. You spoke of the account of Kilbourn and Olmstead; do you mean by that to include the account of Kilbourn and Latta?

A. I include in the accounts furnished us by Kilbourn and Olmstead all the accounts after 1873 of Kilbourn and Latta and Kilbourn and Olmstead with the plaintiffs in this case, and also with myself individually.

Mr. OLMSTEAD: What you wish to state is that the firm of Kilbourn and Olmstead furnished to you the account with Sunderland and Hillyer, and also the account with Thomas Sunderland?

A. And also the account of Kilbourn and Olmstead with Thomas Sunderland.

Col. HILLYER:

10 Q. Mr. Olmstead has stated in his testimony that the complainants, Sunderland and Hillyer, said to him, both in July, 1878, and afterwards, substantially that they were only after Latta in respect to those charges of care and management, and not after Kilbourn and Olmstead. Will you state just what the relations of the complainants to Kilbourn and Olmstead and also to Latta, in
1568 respect to this matter, were, so far as they had in any way, and any reasons there were, if we did.

A. So far as my feelings were concerned, there was a vast difference. Between the defendants Latta and Kilbourn and Olmstead there was then pending a suit—I mean in the summer of 1878—in which Latta was plaintiff and Kilbourn and Olmstead were defendants. I was informed by Kilbourn and Olmstead, and also by General Jeffries, that Latta had treated the other two defendants very harshly, and in that suit, and generally, my sympathies were with Kilbourn and Olmstead. I do not remember the conversation as detailed by Mr. Olmstead, and yet we had conversations about it, and I think I told them that I should pursue Mr. Latta.

11 Q. Were there any references made to you or any facts in your knowledge respecting the pecuniary relations of Kilbourn and Olmstead to Latta and the pecuniary transactions between them in respect to this charge of care and management?

A. It was represented to me by Mr. Latta that Kilbourn
1569 and Olmstead owed him money, and Kilbourn and Olmstead admitted to me that in the summer of 1878 they had in their hands, being successors to the firm of Kilbourn and Latta, two thousand seven hundred and fifty ($2,750) dollars which the firm of Kilbourn and Latta had, which was the balance of the unexpected sum of money in the hands of Kilbourn and Latta when they dissolved.

12 Q. Were there any representations made to you by either of the parties, as by General Jeffries, calculated to produce conviction upon your mind that one or the other of these partners were more to blame for the making of these charges for care and management?

A. Mr. Olmstead told me before I left here in 1878 that Mr. Latta first suggested making the charge.

13 Q. Did you have any knowledge or information of the pecuniary condition of Kilbourn and Latta at that time?

A. They told me they were not able at that time to pay the balance which they happened to have in their hands. Mr. Latta told me they were both insolvent.

1570 14 Q. Did you at the time you made the remark to Mr. Olmstead with reference to pursuing Latta, or at any other time, say to him or Kilbourn or give either of them to understand that it was your intention not to hold them legally responsible for the money which they had taken under pretext of this charge of care and management?

A. I could never have told them that we would not hold all the

firm legally liable, for Mr. Hillyer, Latta, and I had already employed Judge Cox to bring suit against all of them generally, and left an account with him—left four accounts with him—upon which to bring suit. There were two against Kilbourn and Latta and two against Latta individually. I will state in connection with that—as we thought Latta was to blame for making these charges—that I intended, when we got judgment, to execute it against his property.

15 Q. How came the contract with Olmstead for revising the special assessments to be made?

A. There were two reasons for that, I remember now. One was that he had charge of the property, and we thought him more
1571 familiar with the property and the taxes to be revised than any one else, and, in the next place, they acknowledged themselves to be in debt to us twenty-seven hundred ($2,700) dollars, which we supposed would about cover his services in the revision of the taxes. We were desirous of recovering that money and also of giving Mr. Olmstead a chance of working it out in that way.

16 Q. What were the circumstances of giving the receipt of twenty seven hundred and odd dollars to Kilbourn and Olmstead?

A. I think more good nature on my part than anything else, and by the persuasion of Kilbourn and General Jeffries.

17 Q. What was the reason they gave for wanting it?

A. General Jeffries came into Kilbourn and Olmstead's office, where I was at the time, and said if he had that receipt that the defense would get a decree in their favor and mulch Mr. Latta in costs.

18 Q. Did General Jeffries know at the time that you and Hillyer made this claim against Kilbourn and Latta on account of the taking of this money for care and management?

A. He did. It was distinctly agreed at the time—at the
1572 giving of this receipt—it would not be used in the suit which we had then ordered to be commenced against the defendants or in any settlements hereafter to be made between us. My recollection is that General Jeffries pledged himself that it should not be used in any such way.

19 Q. Was the form of the receipt made to correspond to that understanding?

A. That was my understanding of the form of the receipt, but the receipt will show for itself. It was not in settlement, but simply a receipt for so much money, by which Mr. Latta was enabled to sue, on account of which he was trying to get a decree against Kilbourn and Latta. On account of this I believed it was true myself and thank- General Jeffries. He told me at the time everything else had been arranged but this.

20 Q. That is in their suit?

A. This suit against Kilbourn and Latta.

THOMAS SUNDERLAND.

Cross-examination reserved by consent.

Nov. 18, 1882.

THOMAS SUNDERLAND, a witness on behalf of the complainants, recalled.

By Mr. HILLYER:

21 Q. (Handing witness a paper.) I show you a letter dated August 2, 1872, addressed to yourself at San Francisco, signed Kilbourn & Latta. I will ask you to say whether you received that letter and whose signature it is.

A. (After examining.) I received that letter. It is Mr. Latta's signature.

22 Q. The signature and handwriting of Mr. Latta?

A. The signature is in the handwriting of Mr. Latta.

23 Q. Was the letter received by you about the time it bears date or shortly after?

A. Well, I cannot remember as to the date when I received it. I presume it was received in due cause of mail. As to the particular time I received it I cannot tell.

Mr. HILLYER: I offer this in evidence.

Mr. WILSON: Objected to by counsel for the defendant for the reason that the same is immaterial, has no relation to the property in question, and is not rebutting testimony, and, if testimony
1574 at all, should have been offered in chief.

The paper was offered in evidence and is hereto attached, marked T. S. No. 23.

(By Mr. HILLYER:)

24 Q. I will ask you now to look at this letter dated July 18, 1872 (handing witness paper); was that received by you?

A. (After examining.) It was.

25 Q. At about the time it purports to have been written?

A. I presume so, though I do not remember the date of its receipts. I cannot fix that.

26 Q. So far as you know, there was nothing unusual in the time of the receipt of it?

A. Nothing unusual.

27 Q. Whose signature is to the letter?

A. Mr. Latta's.

Mr. HILLYER: I now offer it in evidence, marked T. S. No. 24.

28 Q. State whether that is the letter received by you (handing letter to witness).

A. This letter was received by me about June 22, 1874.

29 Q. In whose handwriting is the signature to that letter?

A. (Again examining.) I am inclined to think that it was
1575 the signature of Mr. Latta; it was one or the other.

30 Q. It is the signature of either Kilbourn or Latta?

A. Yes, sir; "Kilbourn" looks to have been written by him, and the "L" to "Latta" is Mr. Latta's "L;" one or the other.

Mr. HILLYER: I offer this in evidence.
Mr. WILSON: Objected to for the reason given above.

The paper was offered in evidence and is hereto attached, marked T. S. 25.

(By Mr. HILLYER:)

31 Q. I will ask you also to look at this letter (producing a paper), dated July 13, 1882, and state whether it was received by you and whose handwriting the signature is.

A. (After examining.) I think that is Mr. Kilbourn's signature.

32 Q. If the signature was not written by Kilbourn, by whom was it written?

A. By Latta; one or the other.

33 Q. Did you receive that letter at about the time it is dated?

A. I have no distinct recollection of the time of its receipt.

Mr. HILLYER: I will offer it in evidence.

1576 Mr. WILSON: Objected to for the reason above.

The paper was offered in evidence and is hereto attached, marked "Exhibit T. S., No. 26."

By Mr. HILLYER:

34 Q. About what time in the summer of 1872 did you leave Washington, Mr. Sunderland?

A. I left here either in the latter part of June or 1st of July. I can only recall it by having been in New York on the 4th day of July. I had been there a few days before the 4th of July.

35 Q. Where did you go from New York?

A. San Francisco.

36 Q. Do you remember how long you were there?

A. I was in New York, I think, about a week.

37 Q. Do you remember how long you remained in San Francisco?

A. I remained on that coast—not in San Francisco, but on the coast—until the fall of 1872, and I came here.

38 Q. Are these letters received by you during that absence from this point?

A. They were received by me while I was on that coast, during my absence from here; yes.

1577 Cross-examination by Mr. WILSON:

39 Q. Where were you on that coast during the time you mention?

A. I was at Los Angeles two or three weeks. I paid a visite to the geysers. I suppose I was gone two weeks, possibly.

40 Q. Any place else?

A. I had a place near the town of San Mateo, and I was there a part of the time.

41 Q. How far from San Francisco?

A. Twenty-one miles.

42 Q. How long were you there?

A. Well, I think I must have been there over a month, but I was in the city every day that I stayed at San Mateo.

43 Q. Any place else?

A. No.

44 Q. Were you ever at Virginia City during that time?

A. Yes; I think so.

45 Q. How long were you there?

A. I think only a few days.

46 Q. Any place else you can recall?

A. No; I cannot. I was not any place else.

Adjourned to meet on Monday, November 20, 1882, at 4 o'clock p. m.

WM. T. CURTIS, *Examiner.*

1578 WASHINGTON, D. C., *November* 20, 1882.

Having met pursuant to adjournment, and the examiner having announced that Mr. Wilson could not be present because of his detention elsewhere, and having stated that he was unable to communicate with Mr. Totten, THOMAS SUNDERLAND was recalled on behalf of the plaintiffs and, subject to objection by counsel for the defendants, testified as follows:

By Mr. HILLYER:

47 Q. What was the real agreement between you and Stewart in December, 1872, in reference to the transfer to you of his interest?

A. The real agreement was that I was subrogated to all his rights and because responsible for his share of the liabilities on the property—his rights in connection with the property that he had bought and also the property that Stewart and Hillyer had purchased in 1871.

Q. The writing that you received from Mr. Stewart is in form a simple bill of sale, conveying all your interest for a certain amount of money?

1579 A. All his interest.

48 Q. All his interest for a certain amount of money. Does that writing express the whole of the understanding or agreement between you and Mr. Stewart?

A. It did not. It was more of a memorandum than anything else.

49 Q. Was there at the time any cal-ulation made of the obligations which you assumed?

A. There was not.

50 Q. Was there at the time any attempt made by either of you to value the property which you had bought?

A. We went into no particulars as to each piece of property. I offered him so much money—my recollection is now it was $60,000—for his interest, and he accepted the proposition without going into any minutes.

Adjourned to meet to-morrow, the 21st inst., at 3.30 p. m.

WM. F. S. CURTIS, *Examiner.*

Met, pursuant to adjournment, upon this 22d day of November, A. D. 1882.

Appearance: Mr. J. M. Wilson, for def'ts.

1580 Before proceeding with the examination Mr. Wilson requested the examiner to note upon the record the following objection:

To each and every question and answer in the examination of Mr. Thos. Sunderland, on the 20th of November, 1882, because they each of them relate to a written instrument which is the best evidence, and because it is incompetent to explain said agreement and to prove its contents by parol, and without wavering any objection thereto, and especially reserving the same.

Thereupon Mr. THOMAS SUNDERLAND was recross-examined by Mr. WILSON:

51 Q. Was the agreement between you and Stewart referred to in your examination in writing?

A. There was a memorandum of it in writing.

52 Q. Was that agreement signed, and, if so, by whom?

A. By myself and Mr. Stewart.

THOS. SUNDERLAND.

Met, pursuant to adjournment, at the office of Hillyer and
1581 Ralston, 1324 F St. N. W., Washington, D. C., upon this 10th day of July, 1882, at 10 o'clock a. m.

Present: M-. Hillyer, for complainant-, and M. E. Baily appeared for all the defendants in the absence of Col. Totten and Judge Wilson; J. F. Olmstead, Esq., also present.

Mr. JOHN M. KESSLER, a witness on behalf of complainant-, being produced, was by me first duly sworn to testify the trust, the whole truth, and nothing but the truth relative to said cause, and in answer to interrogations propounded to him said:

By Mr. HILLYER:

1 Q. What is your business?

A. At present I am following the printing business.

2 Q. Have you ever been a clerk in any of the offices of the city government?

A. I have.

3 Q. Are you familiar with the records in which the assessment for general taxes and other entries in relation to city taxes are made during the years 1872 to 1877?

A. I am.

1582 4 Q. I will show you an exhibit, which will be marked J. M. K. No. 1, and I ask you to say first whether you made the tables in that exhibit and to explain generally what it contains (showing same to witness).

A. I did it in a statement of general taxes in squares and lots shown in the statement.

5 Q. During what years?

A. From 1872 to 1877, inclusive.

6 Q. Does that statement show the difference between the original assessment of taxes made on the property by the assessor and the amount of taxes finally fixed by the board of revision or appeals?

A. It does.

7 Q. How is that difference shown or expressed in that statement? I refer to the footings, where you have used different kinds of ink.

A. It is shown by the paper itself. The amount in red ink shows the assessed value by the assessors; the amount in black ink shows the appeal values—the amount finally paid.

8 Q. Are the figures and footings in that paper correct?

1583 A. They are, to the best of my knowledge and belief.

9 Q. Have they been made with care and by a thorough examination of the books in the assessor's office?

A. They have.

10 Q. Explain what the last sheet on this exhibit is.

A. It is a recapitulation of all the squares contained in this statement, showing the difference between the assessed value and the appeal value.

11 Q. What was the total amount of the difference between the assessed value and the appeals value set forth in that exhibit?

A. $2,894.26.

Mr. HILLYER: I now offer in evidence the exhibit above referred to and ask that it be attached to the deposition of the witness.

Cross-examination by J. F. OLMSTEAD:

12 Q. You say you made this statement?

A. Yes, sir.

12½ Q. Much of a labor to get this up?

A. Yes, sir; considerable.

13 Q. Could it be made by any one not thoroughly conversant with records of the office of the D. C. and conversant with the

1584 manner of getting up such a statement? Isn't it the work of an expert to get up such a statement as this?

A. You have to have a good deal of knowledge of the books to do the work properly. In answer to first part of question, I do not think so; a person must be expert to get up such a statement.

14 Q. This statement covers fiscal years 1872–'73, '73–'74, '74–'75, '75–'76, '76–'77. In order to make an intelligent appeal from the assessment, is it or is it not necessary to get up each year a statement or a table similar to this?

A. I would; it is necessary.

15 Q. How long did it take you to make this?

A. Off and on about three weeks.

16 Q. What is a fair compensation for getting up this?

A. I think it is worth a hundred dollars.

17 Q. Do you know anything of the amount of trouble and time required in appearing before the board of appeals for the purpose of having assessment equalized or reduced?

A. I do not.

Redirect examination by Mr. HILLYER:

1585 18 Q. You were employed by the complainants to do this?
A. Yes, sir; I was.
19 Q. Have you ever been employed by others to do similar work?
A. I have not at that kind of work.
20 Q. Have you ever been employed before to make statements of the amount of taxes that have been paid on property?
A. I have been employed by Col. Totten to make statement in regard to the 10% line certificates.

Mr. Bailey, for the defendants, reserves the privilege to cross-examine the witness in the absence of Col. Totten and Judge Wilson.

JOHN M. KESSLER.

Met, pursuant to adjournment, at office of Hillyer & Ralston, Washington, D. C., Aug. 3d, 1882, at 12 o'clock m.
Present: C. J. Hillyer & J. H. Ralston, for complainants, and Mr. Baily, on behalf of defendants; Mr. Olmstead also present.

N. L. JEFFRIES, a witness for complainant-, being called & sworn, testified as follows:

Direct examination by Mr. HILLYER:

1586 1 Q. Please state your name and occupation.
A. Noah L. Jeffries; lawyer.
2 Q. Were you the att'y in the year 1878 for Kilbourn and Olmstead in the suit against them brought by J. M. Latta?
A. I was.
3 Q. Do you know of the fact of a receipt for some $2,700.00 having been given in the summer of 1878 by Sunderland and Hyller to Kilbourn and Olmstead for use in that suit?
A. I do.
4 Q. State the circumstances, so far as you know them, in reference to the giving of this receipt.
A. The receipt — presented by me advice, and principally by my own efforts a note of equal amount was given by Kilbourn & Olmstead when the receipt was obtained. The object was to extinguish Latta's liability to Sunderland and Hillyer.
5 Q. Did you yourself talk with Sunderland & HyHer about giving the receipt?
A. I did.
6 Q. How many conversations did you have with one or both of them on the subject.
A. I had several conversations, but I can't tell how many.
7 Q. Did you at the time know of the fact that there was
1587 a disagreement between Sunderland & Hillyer on the one side and Kilbourn and Olmstead & Latta on the other in respect to a charge which the latter had made for care and management of the property?

3 obj.—Mr. Bailey objects to all the foregoing questions as manifestly improper, leading, and otherwise incompetent.

A. I knew there was such a dispute.

8 Q. Was it a subject of conversation between you and the complainants in connection with the subject of giving this receipt?

A. It was discussed.

9 Q. What was said about it?

A. It would be difficult for me to state the language used. I could only give the substance. It was claimed by Sunderland & Hillyer that the charge was not authorized, and was accordingly disputed by them.

10 Q. What, if anything, was said about this claim of Sunderland & Hyller with the giving of this receipt?

A. The giving of the receipt was in no way connected with the subject of the dispute about the commissions; that controversy was in no way to be effected by the giving of the receipt, but was

1588 to stand precisely as if no receipt had been given.

11 Q. In these conversations were you acting as the att'y for Kilbourn & Olmstead, and on their behalf?

A. I was.

12 Q. Did you communicate to them the result of your negotiations with Sunderland & Hillyer in respect to the obtaining of this receipt?

A. I have no doubt but what I did.

13 Q. Did they know the terms upon which the receipt was obtained as respects the agreement which you have said that it was in no way to effect the controversy about the charge for care and management?

A. I have no doubt but that they were advised by me as to what was said by me and done in the matter.

Mr. Bailey, on behalf of counsel for the respective defendants, who are at present engaged in pending star-rout- trials in the criminal court, and at their request reserves the right of objection and cross-examination in respect to the deposition of this witness.

NOAH L. JEFFRIES.

Adjourned *sine die*.

WM. T. S. CURTIS, *Examiner*.

1589 OCT. 17, 1882.

NOAH L. JEFFRIES' cross-examination

By Mr. TOTTEN:

14 Q. You have already been examined by the complainants in — case, have you?

A. Yes, sir; cross-examined, I think.

15 Q. You were the attorney for Kilbourn and Olmstead in the equity cause in the supreme court of the District of Columbia, No. 5919, the bill in which case was filed on the 10th of November, 1877?

A. I was one of them.

16 Q. Who was the other?
A. Mr. Mattingly, at the time.
17 Q. Did you have anything to do with preparing the answer of Kilbourn & Olmstead to the bill of Latta, a bill instituted in the equity court of this District at that time?
A. Yes, sir.
18 Q. Assuming that the bill was filed on the 10th of November, 1877, in each of those cases, about what time did you send copies, if any, of the pleadings to Hillyer and Sunderland?
A. I cannot fix the date when I sent copies.
19 Q. About how long after the pleadings were in?
1590 A. Very soon; I should say right away; as soon as I could make copies.
20 Q. Did you send the answers in each case?
A. That is my recollection.
21 Q. You sent the answer to the Kilbourn and Olmstead bill?
A. Yes, sir; that is my recollection.
22 Q. Where were you when you sent them?
A. I cannot remember whether I put them up in Olmstead's office or put them up in my own office.
23 Q. Where did you get them?
A. From Olmstead. I directed him to have them made out. If he did it, it was at my suggestion. I wanted Messrs. Sunderland & Hillyer to see the issue between Latta, Kilbourn, & Olmstead, and I directed him to have copies of these papers made and given to me, so that I might forward or have them forwarded to Sunderland & Hillyer.
24 Q. Was Olmstead present?
A. I do not know; I cannot say.
25 Q. What do you think about it?
A. It was very probable that he was present.
26 Q. Do you think he was?
A. That would be my best impression.
27 Q. Was anything else enclosed in that package?
1591 A. I would not want to say what was in that package. There was probably a letter from myself—copy of the pleadings; whatever was necessary to put them in possession of the case as it stood.
28 Q. Do you know whether there was an account curre-t in the package?
A. I cannot remember.
29 Q. To whom did you send the papers?
A. To Mr. Hillyer.
30 Q. Where was he?
A. In Virginia City or San Francisco; I do not know which.
31 Q. Virginia City is in Nevada?
A. Yes, sir.
32 Q. Did you send the package by mail or by express?
A. I cannot answer that.
33 Q. It amounted to a pretty big package, did it not?
A. Yes, sir.

34 Q. Do you remember how it was put up?

A. No, sir.

35 Q. Do you remember paying postage on it?

A. No, sir; I either paid postage or expressage.

36 Q. Do you remember sending it to the office?

A. No, sir; I know this fact: I sent Mr. Hillyer a copy of
1592 those proceedings, but, so far as particulars are concerned, I cannot remember. It was four years ago.

37 Q. What was the vital point in issue in that suit in which Latta was complainant in reference to which Sunderland & Hillyer wanted to be advised?

A. My recollection is that Latta claimed that there was a certain amount of money that Kilbourn and Olmstead ought to pay to Hillyer which they had not paid, and for which he was responsible.

38 Q. Was that the same bill you afterwards obtained and receipted for?

A. Yes, sir.

39 Q. Two thousand seven hundred and fifteen dollars and fifty-eight cents?

A. Yes, sir; whatever the sum was—$2,700.

40 Q. What was the purpose of sending these papers to Sunderland and Hillyer?

A. I wanted Mr. Hillyer to see exactly how the controversey stood. Kilbourn and Latta had been the agents of Sunderland and Hillyer there, and I was not only the attorney of Kilbourn and Olmstead, but I was their friend, and I thought that Latta was taking
1593 advantage of them, and I wanted Mr. Hillyer to see from the pleadings (not from any letter that Kilbourn and Olmstead wrote, but from the record in the case) which was in the right; that was what I was trying to explain to those gentlemen.

41 Q. Did you send to those gentlemen all that was necessary to show them what was the status of this affairs?

A. That is my recollection. I have no doubt I did.

42 Q. Then, if this account current was necessary to give them full information, that was sent?

A. Yes, sir; if it was necessary to give them full information.

Redirect examination by Mr. HILLYER:

43 Q. You say, General, that you do not remember whether you sent any account or not?

A. I do not.

44 Q. If that be so, you do not remember what the character of the account was you sent at all?

A. No, sir; I do not.

45 Q. Do you know whether it was an account with Kilbourn and Latta or an account with Kilbourn and Olmstead—if you did
1594 send one, could you remember distinctly enough for that?

A. Let me see.

46 Q. (After a pause.) If you will wait a moment, I will bring you a couple of letters of yours, and they will bring it to your attention. I have sent Mr. Sunderland over for them.

A. All right.

OCT. 17.

NOAH L. JEFFRIES' redirect examination resumed.

By Mr. HILLYER:

47 Q. (Producing two letters that Mr. Sunderland had brought him, purporting to have been written by Mr. N. L. Jeffries to Mr. Hillyer.) These are your letters, are they not?

A. Yes, sir; they were mine; they are yours now; they were written by me to you.

(The letters having been identified, the same were introduced in evidence by Mr. Hillyer, and are hereto attached, marked "N. L. J." No. 1 & No. 2, respectively.)

48 Q. These letters were written in behalf of Kilbourn and Olmstead?

A. Yes, sir.

49 Q. And, of course, the facts stated in them are accurately stated?

1595 A. As I understand—yes, sir.

50 Q. In your letter in which you sent the pleadings you mentioned sending an account. Have you any recollection what that account was?

A. I suppose what it says there.

51 Q. You said you sent an account.

A. I want to explain right here. I stated in my examination-in-chief that I sent copies of all the pleadings. I find that I sent the bill. I did not wait until they were all filed before I sent them. I suppose I sent them as fast as they were filed. I see from this letter that I sent the bill without waiting for the answer. I sent the bill on the 26th of November, 1878.

52 Q. Do you remember anything about what you mentioned as an account?

A. No, sir; I do not remember the details.

53 Q. You do not know whether it was an account between Kilbourn & Olmstead or Kilbourn & Latta?

A. It was Sunderland & Hillyer's account with Kilbourn and Olmstead or Kilbourn and Latta, I cannot say. It will show for itself.

1596 Met, pursuant to last adjournment, upon this 23d day of November, at 10 o'clock a. m.

Appearances: Mr. Wilson and Mr. Totten, for defendants.

N. L. JEFFRIES, being recalled and cross-examined b Mr. Totteny, testified as follows:

54 Q. Mr. Jeffries, I now show you the letter which you wrote to the complainant, Mr. Hillyer, bearing date Washington, D. C., November 26, 1877, and heretofore attached to your deposition, marked N. L. J. No. 2, which is produced on evidence by the complainant, Mr. Hillyer, at your last examination, and I invite your attention to the first page of this letter, where this language occurs, to wit: "On

the 29th of August (where I have placed the * on the ac.);" and I also show you the account attached to Olmstead's deposition, marked J. F. O. No. 25, and direct your attention to the star or asterisk appearing on the first page of that account, and bearing the date of Aug. 29, 1877, and ask you whether you made a star or asterisk on this account as it appears.

A. I have no doubt but that the star or asterisk on the letter and the one on the account are both made by me.

1597 55 Q. Do you recognize this account now before you?

A. I have no doubt of it.

56 Q. Do you recognize this account as the account mentioned in your letter of Nov. 26, 1877, and as the account which you inclosed with that letter to Mr. Hillyer?

A. I have no doubt about its being the same account.

N. J. JEFFRIES.

JULY 19, 1882.

Mr. ROBERT I. FLEMMING, a witness on behalf of the plaintiff, having been duly sworn, testified as follows:

Direct examination by Col. HILLYER:

1 Q. Mr. Flemming, do you know *any* anything about the house that was owned by William M. Stewart on Massachusetts avenue near the corner of 14th street, in 1872 and 1873?

A. Yes, sir; I do. I made a contract with Senator Stewart to build his new residence on Dupont circle and take this house in trade in part payment.

2 Q. Did you and Mr. Stewart make this bargain yourselves or did you make it through any brokers?

A. No, sir; I think it was made through Mr. Stewart and Mr. Cluss—made altogether in his office.

1598 3 Q. Were there, to your knowledge, any brokers mixed up in the transaction?

A. Not to my knowledge. I have no knowledge of any brokers having anything to do with it at all; it was a written contract, prepared by Mr. Adolph Cluss, the architect.

4 Q. Did Mr. Sunderland, to your knowledge, have any interest in that house?

A. None to my knowledge. The deed received from Mr. Stewart was signed by himself and wife.

5 Q. Did Mr. Sunderland have any interest in Stewart's house on "Dupont Circle," that you were building, as you knew of?

A. None that I am aware of.

6 Q. In your acquaintance, as a party in the transaction, do you know of any reason why Mr. Thomas Sunderland should be charged with commissions on the sale or trade between yourself and Stewart?

A. I do not see how he should be charged with commissions; we had no transaction with him.

7 Q. Never had any transaction with him?

A. No; no transaction in the world.

1599 Cross-examination by Mr. OLMSTEAD:

8 Q. You would not know anything about the arrangement between Mr. Stewart & Mr. Sunderland, if he had anything to do with it?

A. None in the world—or any understanding they had between themselves, or of anything of it.

9 Q. You know nothing of the inducements Mr. Stewart had to build this house?

A. I know nothing outside of the contract made with Mr. Stewart to build the house.

10 Q. You had nothing to do with the house but to build the house for the amount and take another for the payment—except it was the agreement to which you agreed?

A. That is all. I was to take the house at a certain sum.

Mr. HILLYER: That is all, Mr. Flemming.

ROBERT I. FLEMMING.

JULY 19, 1882.

Mr. E. FRANCIS RIGGS, a witness for the complainant, being duly sworn, testified as follows:

Examined by Col. HILLYER:

1 Q. Mr. Riggs, are you the son of George W. Riggs, deceased?

A. I am, sir.

1600 2 Q. Have you in your custody the book in which was kept the original entries of his private business in 1872?

A. I have, sir.

3 Q. Is there any entry in that book respecting sale of square 195 to J. M. Latta?

A. In his personal journal, under the date of June, I find this entry, among others:

Riggs & Co., Dr.

To lots in sqr. 195, 12 pieces, sold to Mr. Latta:

Lots 11 to 25, for 52,500, less $2,500	$50,000
Less note @ 3 years	40,000
	10,000

Filed Dec. 23, 1882.

R. J. MEIGS, *Clerk.*

4 Q. Do you know anything personally, Mr. Riggs, about this transaction?

A. Nothing whatever. I was not in town at that time.

(Mr. OLMSTEAD:) If we desire cross-examination I will send for you, Mr. Riggs.

(Mr. RIGGS:) All right, sir; if needed I will come.

E. FRANCIS RIGGS.

JULY 19, 1882.

Mr. WM. H. CLAGETT, called on behalf of the plaintiff, after being duly sworn, testified as follows:

1601 Mr. CURTIS, the examiner: Mr. Clagett, will you please give your full name?

A. William H. Clagett.

Examined by Mr. HILLYER:

1 Q. Mr. Clagett, were you ever a member of a board for the purpose of receiving assessments for general taxes in this city?

A. I was.

2 Q. At what time?

A. I was a member of the board of assessors to make assessment for the annual taxes for 1875 & 1876—from July first, 1875, to July 1st, 1876.

2½ Q. What was the jurisdiction of that board—the general scope of the powers of that board?

A. The board of assessors, to make what was called a general assessment, was appointed in March, 1875, by the Commissioners to make a general assessment of the real and personal property of the District of Columbia.

3 Q. Do you mean that this board made the general assessment or that they revised the previous assessment made by the assessors?

A. They made an entirely new assessment of the real estate.

1602 4 Q. Was there any revision of the assessment made by this board after it had been completed?

A. There was.

5 Q. By whom was that revision made?

A. By the same board, under the same law. The law provided that they should complete the assessment on a certain day, and then sit as a board of revision after that for a certain period.

6 Q. State what was the method or system of proceeding in revising or equalizing assessments.

A. The board sat as a board of appeals to hear appeals from the assessments made by the then board of assessors. Parties came forward with appeals and stated wherein they thought the assessment too high. Sometimes appeals were made in writing and sometimes verbally.

7 Q. What length of time was afforded for representation — argument by those who asked to have the assessment revised?

A. I do not recollect. (I tried to get the law as I was coming up here, but it is all stated in the statute.) I think, however, it was twenty (20) days after we had completed the assessment; "pre-

1603 vious to the first of July, my clearest recollection is."

8 Q. That is, within twenty days appeal must be made?

A. "I think it was twenty days."

9 Q. In reference to unimproved real estate of the city which had been assessed at a certain price, what was the character of representations which the board heard and allowed to influence them with a view to altering the amount of the assessment?

A. We were entirely governed by equalizing it with some other property in the same vicinity.

10 Q. In such cases—I speak now of property entirely unimproved—was there any occasion or opportunity that new features could be introduced or presented to the board, or were the facts which the board would allow to influence them already in their possession and only required that attention should be called to them?

A. That is a pretty long question.

Mr. Hillyer repeats question.

A. I can answer the question, probably, not directly, but
1604 indirectly, by stating the plan of our proceedure.

11 Q. Very well, state that.

A. In the first place, when we undertook the assessment of real estate in the District, the entire assessment of the ground was left to me personally for an assessment. I went over the entire ground with a view to equalizing the assessment so far as it was in my power to do so. I assessed the whole ground in the city. In many cases my figures were a little high and in as numerous cases they were a little low; then the result was that the appeal board had to decide. Wherever there were appeals from our assessments in any particular neighborhood and we were satisfied by the representation made by the property-holders we allowed the reduction and made it general in that whole neighborhood without appeal from other parties. For instance, if we had assessed any property on any particular front or corner of any particular square and the representations of that property satisfied us that we were too high in making the assessment, and without appeals from the owners of prop-
1605 erty in that immediate vicinity we gave them the benefit of it without an appeal—that is, we equalized, as far as we were capable of doing so, the property in the immediate vicinity of any we had allowed the reduction on.

12 Q. How long did it generally take after persons should appeal to make revisions by the board, which they desired it to make, in favor of a reduction?

A. I would state that the board of assessors at that time was composed of gentlemen of large experience and who were very familiar with the citizens of the District, and where parties came forward that they recognized of equal experience and judgment the board acted almost at the moment whilst they were before the board. It made the alterations at that time, governed to a great extent with their familiarity with the property and the parties who came forward.

13 Q. In respect to unimproved property was it necessary or could it be of any advantage to present a written statement to this board beyond a mere notice of appeal?

1606 A. It was generally the form of making appeals from an assessment to do so in writing upon a printed form of the board, on account of the numerous appeals; but in a majority of cases when parties came themselves and convinced the board that the property was marked too high the matter was settled—either re-

fused or adopted—at that time. I would say, in connection with that, that we had not a great many contests on account of it. Whilst we were making the assessmens we invited the tax-payers to come before the board—before the board of appeal- was organized—and offer their verbal statement, and in many cases we acceeded to their demands previous to the board of appeals going into session.

13 Q. Was there any such thing, Mr. Clagett, as obtaining a reduction in the valuation of any particular lot or any particular block of ground without reference to the valuation of the property by which it was surrounded and in that neighborhood?

A. I do not think there was such a case on our assessment.

1607 14 Q. If I understand you, then the board fixed upon a general valuation for certain districts, certain squares, and endeavored to make the valuation of all particular parcels of property in that section conform?

A. Yes, sir.

15 Q. How long was the board of appeals in session?

A. I think the law provides for twenty days. It is a statute law and it states when they shall finish the assessment, and when they had to go into an appeal board — to be finished by the first of July.

16 Q. In making the general assessment by this board, what did they take, if anything, as a basis for their valuation?

A. I took my entire own judgment as to the valuation of the ground.

17 Q. That is all.

Mr. CURTIS, the examiner: We may have to recall you, Mr. Clagett, for cross-examination.

Mr. CLAGETT: Will you try and make it at this hour (3 o'clock)?

Mr. CURTIS, the examiner: I will try to make it at any hour to oblige you.

W. H. CLAGETT.

1608 OCT. 17.

WILLIAM H. CLAGETT cross-examined by Mr. WILSON:

18 Q. How long have you resided in this city?

A. I have been here now 55 years. I was born here.

19 Q. And have resided here continually?

A. With the exception of 4 or 5 years.

20 Q. Were you here from the period, say, from 1870 up to this time?

A. Yes, sir.

21 Q. Have you any familiarity with the manner in which assessments of real estate were made in this city about the years 1870, 1871, & 1872?

A. Yes, sir.

22 Q. Do you recollect what was done by the Board of Public Walks with reference to putting assessments on real estate in this city?

A. The general assessments?

23 Q. Yes, sir; the general assessments.

A. Yes, sir.

24 Q. How was that assessed—was it high or low?

A. There was an assessment made immediately after the Board of Public Walks came in power, in the fall of 1872 and 1873. We came in — 1874. The board of assessors consisted of, I think,
1609 one from each district. The District was divided into twenty-two districts. They met and divided themselves up into sections. My recollection is that it took the old wards. They made the assessments in a general way by visiting the property, and after they had completed their assessments there was a board of appeals.

25 Q. Did you have anything to do with making that assessment?

A. No, sir.

26 Q. It was after that you became an assessor?

A. Yes, sir.

27 Q. You became an assessor after the board went out of existence?

A. Yes, sir; in 1874.

28 Q. What do you know as to that board having procured that assessment to be made at extravagant figures with the view to the presentation to Congress of a large showing as to the value of real estate in this city, having reference to the procuring of appropriations for public improvement—the improvement of streets and alleys that they had inaugu-ated?

1610 A. I only know from hearsay. From the evidence that was given in before the investigating committe- by the assessors themselves they were instructed to value the property high for that purpose.

29 Q. Do you not know it was a notorious fact in this city that property had been assessed in such a way at that time, and especially the outlying property, that it was practically a confiscation of the property to pay the taxes on it?

A. It was in reference to all the taxes that were levied upon it.

30 Q. I am speaking of the general tax.

A. The assessments were higher than they had ever been before, and they were higher than they have ever been since.

31 Q. When you came to be an assessor were the assessments increased or reduced?

A. Reduced.

32 Q. Was that a general reduction?

A. It was a general reduction, except in special cases where property had been improved since the last assessment, but it was generally reduced.

33 Q. You were pretty actively identified with that investi-
1611 gation that occurred with reference to the affairs of the District of Columbia?

A. Yes, sir; I was the originator if it, I believe.

34 Q. What was the trouble in this District that gave rise to that investigation?

A. Well, the general carelessness of the parties who were in power

at that time; the manner in which they were doing the work; the manner in which they were assessing to pay for it. A few citizens who were bold enough to come forward and fight them did so, because they saw bankruptcy ahead. That was my view.

35 Q. Now, the condition of things at that time was such that the people became alarmed lest their property should be confiscated by these special and general taxes that were being placed upon it?

A. Yes, sir.

36 Q. What do you know as to the complaints all over the city with reference to the unjust, illegal, and excessive assessments that were made on account of the street improvements?

A. Do you mean special cases?

1612 37 Q. All over the city.

A. Generally that was the condition of affairs at that time. It resulted from the overspending of money beyond the appropriations for doing it.

38 Q. I will ask you to state whether or not it is true that in making up these special assessments in many cases extravagant assessments were made and much beyond what they were entitled to assess.

A. Yes, sir; that was proved since.

39 Q. And that was the subject of a great deal of inquiry, really a consternation, among the people?

A. Yes, sir.

40 Q. Now, what do you know in that connection as to its being necessary for property-holders in order to protect themselves and to protect their property to be constantly watchful as to the assessments that were being made against their property?

A. It went to the extent that we had an organization—a committee of seventy—that through their committee was constantly and secretly at work to undertake to stop this thing.

1613 41 Q. I am speaking of the individual property-holders. I will ask you to state whether it is not so, that whenever a street was projected through unimproved property, or along property that was improved, and they put down new pavements, new curbs, new sidewalks, it would not be necessary for the holder of that property to be constantly watching to see that they did not overassess him for those special improvements.

A. Judge they were vigilant so far as protecting their property that was visible, such as carrying off curbstones or bricks and doing other matters, but in regard to their power to have any weight in regard to the assessments that was put on it they were powerless.

42 Q. But after the assessments had been made was it not necessary, in order that they should protect themselves, that they should look after the manner in which it had been made and the extent to which they had been assessed?

A. After these assessments had been made and placed
1614 against the property the citizens in many cases went into court and enjoined the collection of these assessments. Others went to Congress, and, through some three or four years' agitation—from 1874 to 1878—they were unable to effect much until they got

Congress to understand the merits of the case and were perfectly satisfied that the property was generally overcharged for the work done; and in April, 1878, Congress passed a law to refund—at least to "revise" is the word they used—the special improvements that were then unpaid, and when they found that the property had been overcharged they gave them credit for the overcharge. In 1879 the people thought it was very unjust for Congress to pass a law allowing drawbacks to parties who had unpaid bills while for those who had paid their bills there was no provision. We went to Congress again in 1879, and they passed a law to revise the paid assessments, and they gave them a drawback.

43 Q. Now, from 1873 was there not a constant effort being made by parties owning and having care of property to correct
1615 these assessments and relieve the property of these burdens that had been placed upon them?

A. They were on the alert all the time, doing everything they could under the law to get these matters straight and fair.

44 Q. You had been a property-holder here to a great extent, and have had a great deal to do with real estate?

A. Yes, sir; I have, all my life.

45 Q. Did you regard it as necessary that people here should take that kind of action in order to protect themselves against those inordinate charges upon their property?

A. I did. I was very active myself.

46 Q. Now, I wish to call your attention to another matter. Do you remember a tax here known as the "sewer tax?"

A. Yes, sir.

47 Q. Do you know how that was distributed over this city and the extent of it?

A. Yes, sir.

48 Q. State briefly how that was.

A. It was levied by the Legislature that we had then for what we call general sewer purposes—two cents a square foot on all
1616 the ground that was in the city limits.

49 Q. That was exceedingly burdensome to the property, was it not?

A. In many cases the property was not worth it.

50 Q. When you get out in the unimproved section of the city—this two-cent tax being distributed all over the city in that way—what was the effect of that tax upon this outlying unimproved property?

A. If that had been enacted into a law I might say, and that, too, in bounds, it would have confiscated one-fifth of the land in the District.

51 Q. That was one of the grievances?

A. Yes, sir.

52 Q. Ultimately the tax was taken off by Congress?

A. Yes, sir; Congress annulled the law and ordered the tax to be funded.

53 Q. They issued a species of security called "sewer certificates," did they not?

A. Yes, sir.

54 Q. What interest did they bear?

A. They have eight per cent.

55 Q. Were they a lien upon the property? Was the property liable to be sold for these certificates?

1617 A. I will have to explain: There was what was called a "sewer bond" and "sewer certificate." The bond itself bore eight per cent. That was secured by these taxes that — levied for what was called the sewer tax. There was, however, a certificate issued where the tax was not paid; that bore ten per cent. interest.

56 Q. This sewer tax was a lien upon the property?

A. Yes, sir; that was a lien upon all property if it was not paid.

57 Q. That sewer tax was ultimately removed by Congress, and the parties who had not paid it were relieved from paying it?

A. Yes, sir.

58 Q. The parties who had paid it were reimbursed out of the general fund of the District?

A. Yes, sir.

59 Q. When was it you were appointed?

A. In 1875; I made the assessments from 1875 to 1876.

60 Q. What time in 1875 did you begin?

A. About March; we commenced immediately after we were appointed; I think it was along about the 4th or 5th of March.

1618 61 Q. And then you commenced to make a revision of the entire assessment?

A. We made an entirely new assessment for the year 1875-'76.

62 Q. And after you had made your assessment returns then the law provided for an appeal from your assessments?

A. Yes, sir; the law provided that we should complete them by the 1st July, and then the same board resolved itself into a board of appeals. I may be a little incorrect in regard to the date—I forget; I gave it when I was here before.

63 Q. It does not matter about that. You became a board of appeals—what is sometimes called a board of equalization of assessment?

A. We became a board of appeals when we found we were too high.

64 Q. And the property-owners came before you and made their complaints and you considered them—determined them?

A. Yes, sir.

Redirect examination by Mr. HILLYER:

1619 65 Q. Do you know the defendants, James M. Latta and Olmstead & Kilbourn?

A. Yes, sir.

66 Q. Did you know them in 1872, '3, '4, '5, & '6?

A. Yes, sir.

67 Q. You have said, if I understood you, that there was a number of citizens of Washington who were much dissatisfied with the doings of the Board of Public Works and considered that they were making extravagant and unauthorized expenditures, which would be

disastrous to the city if continued. Were there any citizens of Washington who supported the Board of Public Works in what they did and in what they had done?

A. Oh, yes, sir.

68 Q. Do you know where Mr. Kilbourn and Mr. Olmstead stood upon that question?

A. Yes, sir.

69 Q. What was their position?

A. Personally, I have none officially.

70 Q. I asked you if you know their position upon this question. In this controversy where did they stand?

A. They were for the Board of Public Works.

71 Q. They sanctioned their expenditures, which you and those associated with you considered extravagant?

1620 A. Yes, sir.

72 Q. They upheld their assessments of which you have spoken? Is that true?

A. Yes, sir.

73 Q. Did they do that clear through until the investigation of Congress was concluded?

A. Yes, sir.

Recross-examination by Mr. WILSON:

74 Q. Do you know whether they supported them in the assessments that had been made or the system of public improvements that they had made?

A. They sustained the Board of Public Works. There were two elements—one that was fighting them and a very large number of citizens who sustained them. There was some politics in it, but there were very few citizens who took this stand. I think there were forty of them who memorialized Congress. We were very much ostracised and alarmed generally.

75 Q. Is this not a fact, that a great many citizens sustained them in the scheme of improvements that they were prosecuting?

A. I sustained the Board of Public Works under the organic act, when the first scheme was inaugerated.

1621 76 Q. But after they had commenced their operations was there not a great many citizens who sustained the board in the matter of pressing improvements and making improvements that they were contemplating making or had started out to make in the city—that is to say, they wanted the improvements made?

A. That was the understanding. We wanted the improvements made.

77 Q. And while many of them wanted the improvements made they did not sanction any improper assessments of property or improper taxation of property?

A. I cannot answer that question. There is a matter of history about that point. So far as I, myself, was individually concerned, I was an improvement man all the time and voted for what is known as the "four-million loan." A great many citizens were alarmed at so large a loan being asked for, but I thought I saw that

if it were spent judiciously under the organic act, with the assistance that we could get from the Government, it would do the work, and the work was laid out. The organic act provided that no
1622 contract should be entered into until there was an appropriation, and each street was supposed to be measured all over the city and specified and mentioned in the bill appropriating for these streets.

78 Q. That was on the "comprehensive plan?"

A. That is the "comprehensive plan." That is in existence. The understanding then was that a couple of millions of dollars should be spent the first year, and, with the assessments on the property and the assistance of Congress, this four-million-dollar loan, as a general fund, would do the work; but what first created the alarm in the city is this: I think in less than nine months the four million dollars was gone and they commenced issuing certificates in one shape or another, and the market value of them became very low, and then they commenced getting up these other schemes for assessments. This sewer tax was one. That would have amounted to four millions of dollars. It was about that period the people, watching *them* property closely, *because* alarmed.

79 Q. The division of sentiment with regard to the Board
1623 of Public Works was in reference to the question whether they should go beyond what was called the "comprehensive plan," some of the citizens wanting them to go ahead?

A. Yes, sir; making no difference what it cost.

80 Q. And other citizens restricting them to the "comprehensive plan"—that is to say, the plan which was laid before Congress?

A. Yes, sir.

81 Q. But there was nobody who was justifying improper assessments on anybody's property, was there?

A. So far as the special tax levied, the property-holder had no voice in it whatever.

82 Q. Exactly; but if they said the street actually cost three dollars a running foot along the property and it was charged up to the people and owners of the property at six dollars a foot, nobody was justifying anything like that, was there?

A. No, sir. Just as soon as they commenced issuing these special assessment certificates the fight commenced. They thought their bill too high.

1624 83 Q. Everybody fought every bill that was too high?

A. Yes, sir.

84 Q. And in order that a man's bill should not get too high, or that he should know that it was not too high, he should watch out and see what was done?

A. All he could do. In a great many cases parties got special measurements—the cost of the work immediately connected with their property.

85 Q. He had to find out what this thing had actually cost, and then find out what his assessment actually was, to see if he had been overcharged?

A. There was no way at first to find out, except by measuring it

himself. He could not find it out from the authorities. He had no admission to any books. It was arbitrary. It was "pay or get up and get," and there was no way in which we could get at the books to see the figures.

86 Q. So that it required a labor—it required that something should be done in order to know?

A. It required a good deal of labor to any man who undertook the job.

1625 87 Q. It required a great deal of labor to get at what the true assessment should be?

A. Yes, sir. I know it cost me all my business fighting the Board of Public Works.

88 Q. What I want now distinctly to understand is this: Is it not the fact that after an improvement was made along the street—pavements laid, sidewalks made, curbs set, and all that—and the man's assessment came out, it required a great deal of work to ascertain whether that assessment was correct?

A. He had no way of finding out except guess-work.

89 Q. He either had to guess at it or get somebody to measure it or get access to the books of the Board of Public Works?

A. Yes, sir.

90 Q. Some of those things had to be done in order to ascertain what the p-oper assessment was?

A. Yes, sir.

91 Q. And I understand you to say when they issued these assessments the contest commenced?

A. Yes, sir; from that time.

92 Q. But prior to that time there was a difference of senti-
1626 ment as to whether they should proceed with their scheme of improvements, some wanting them to go ahead and others wanting them to stop; that is about the way?

A. Yes, sir.

By Mr. HILLYER:

93 Q. In that contest you were on one side and Kilbourn & Olmstead on the other. Is that true?

A. I cannot say they took any part, only they had no sympathy with our party.

94 Q. Was it not a recognized fact that they supported the Board of Public Works during that investigation and against you?

A. Yes, sir; there is no question about that.

By Mr. TOTTEN:

95 Q. Not as to the sewer business?

A. Yes, sir; they favored the whole of it; they sustained the whole thing—sewer and all.

W. H. CLAGETT.

Adjourned to meet to morrow at 3.30 p. m.

WM. T. S. CURTIS, *Examiner.*

Deposition of Charles A. Eldrege, taken on behalf of complainants upon this 10th day of July, 1882, at office of Hillyer
1627 and Ralston, Washington, D. C.

CHARLES A. ELDREDGE sworn and examined on behalf of complainants.

By Mr. HILLYER:

1 Q. Were you in Washington in the years 1871 & 1872?

A. I was here on and off during those years.

2 Q. Were you a member of or did you have an interest in an association called the Real Estate Association, got up for the purpose of purchasing real estate in Washington?

Objected to by Mr. Bailey as immaterial and irrelevant.

A. I was associated with some other parties in having real estate purchased for us in Washington. I have forgotten what year, but I think it was 1872.

3 Q. Will you give the names of those parties who were associated with you?

Objected to by Mr. Baily for the reasons given above.

A. There were five of us, if I remember rightly, besides the firm of Jay Cooke & Co., Judge Pierce, M. B. Young, of Georgia;
1628 Judge McArthur, General Belknap, a Mr. Parker, and myself.

4 Q. What interest did you have?

Objected to.

A. We all put in originally five thousand dollars apiece, and the balance, to make up fifty thousand dollars, was put in by Jay Cooke & Co.

5 Q. That would make each of your interests one-tenth?

Objected to.

A. Yes, sir. Subsequently I was called on for from two thousand to two thousand five hundred dollars, which I paid. I understood that some of the parties did not pay their assessment.

6 Q. You paid the original five thousand dollars?

A. I paid the original five thousand dollars and the subsequent assessment, whatever it was.

7 Q. Do you know what brokers, if any, were employed by this association to make these purchases?

Objected to.

A. The firm of Kilbourn and Latta I understood to be the
1629 men who were authorized to make the purchases and did make the purchases at the beginning. Although I did not have any conversation with Latta, I understood that Kilbourn was the man. Whether Mr. Olmstead was a partner at that time or not

I do not know. The purchases, as far as I know anything about them, were made by that firm.

8 Q. On what terms, if you know, were those purchases to be made?

Objected to.

A. I never knew of any other terms than that they were to buy real estate and charge commissions on purchases. I do not know if there was any agreement as to what commission should be charged. I never made any agreement. I talked it over with Kilbourn sometimes. I do not remember what the compensation was to be. I do not think it was ever talked of to me so that I knew what it was. I supposed they would be paid commissions for their services.

9 Q. Was there ever, to your knowledge, any agreement or
1630 arrangement made by which, in addition to commissions for making these purchases, the firm of Kilbourn & Latta were to be interested to the extent of one-half in the profits which might be made or to any other extent?

Objected to.

A. There never was any such agreement made with me.

10 Q. Did you ever know of any such agreement being made?

Objected to.

A. I never heard of any. I understood from Kilbourn, I think, when the association was first started, that in some way or other he expected to be one of the shareholders in the concern, and he made some complaint to me that he was not. What the particulars were I cannot state. He did not complain of me, but he found fault that it was not exactly what he expected.

11 Q. When did you part with your interest in the Real Estate Association?

Objected to.

A. I never made any final arrangement until some time—I for-
get exactly when—about two months ago. Last fall some
1631 time or previous to that time I had agreed or consented that the firm of Jay Cooke and Company, which failed and was represented by some man by the name of Lewis, trustee—that Kilbourn & Latta should put an encumbrance on the property and subject my interest to that encumbrance to secure them, as they threatened or had commenced a suit, and were threatening to apply for or had applied for a receiver, and that that should be settled up. I consented that a mortgage should be put upon my claim, or rather that my claim should be subject to that mortgage, and I do not know but the paper I executed at that time may have been a release in some form. I have forgotten what the paper was.

Objected to as utterly irrelevant, immaterial, and not responsive to the question.

The WITNESS: The question, as I understood it, was when I parted

with my interest. I do not mean to say that I parted with my interest at the time I consented that that mortgage should be put on, but my final arrangement was with Mr. Olmstead not many
1632 months ago; I do not remember exactly when.

12 Q. Previous to the time of this final arrangement of which you speak had you ever been paid on received from any one any money on account of your interest in Real Estate Association?

Objected to.

A. Nothing whatever.

13 Q. What was the final arrangement by which you parted with your interest?

Objected to.

A. Mr. Olmstead gave me a lot and $400 in money. It was a lot on Iowa Circle.

14 Q. How much was the lot worth?

Objected to.

A. I cannot tell what it is worth; he called it at the time worth $1.35 a foot; I did not think it was worth that much.

15 Q. That would make the lot how much altogether?

Objected to.

A. I do not know the number of feet.

16 Q. I only want to know, generally, in the neighborhood of how much it was?

1633 A. I cannot even do that, as I do not know the size of the lot. It would not be worth the amount of money I put in without any interest. If I had the deed I could show you the number of feet, but I have not.

17 Q. Were you ever informed in the year 1872 or subsequently that square 156, which had been bought in October, 1871, by the Real Estate Association, had been sold at a profit of $27,000 or any other profit?

Objected to as leading, irrelevant, immaterial, and otherwise incompetent.

A. I was told of some sales at different times that had been made at a profit. I was informed by some one of the parties, Mr. Kilbourn or Mr. Olmstead, I should say, for I generally had my conversations with them or both of them, that certain sales had been made, but I cannot remember the squares, and I cannot remember that it was No. 156.

18 Q. Did not they tell you the amount of the profits that had been made on these squares?

Objected to.

1634 A. No, sir; I do not think they ever told me the amount of profit. They told me they had sold certain property and realized certain profit. What property they mentioned, what lots

or squares, I do not remember. I understood there were profits made on some properties that were sold. I understood that some were sold where there was no profit made.

19 Q. If they had told you that there had been a profit made on one square of twenty-seven thousand dollars would you probably have remembered it?

Objected to.

A. I think if such a thing as that had been told to me I should remember that they had sold a piece of property at a large profit.

20 Q. You have no recollection of any such thing being told to you?

Objected to.

A. No, sir; I have none—that is, none further than I have stated.

21 Q. Has there ever been an account rendered to you of the profits of the Real Estate Association?

Objected to.

1635 A. There has never been what I would consider an account. There may have been some statements made once or twice to me by Mr. Olmstead, and I think he once gave me a table showing the amount of liens and perhaps the price for which property had been bought.

22 Q. Did he ever give you a statement, or any one, showing a transaction of the purchase and sale of square 156, the sale being made at a profit of twenty-seven thousand dollars?

Objected to.

A. I cannot remember squares.

23 Q. Have you in your possession the paper given you by Mr. Olmstead of which you spoke?

Objected to.

A. I do not know whether I have or not. I looked for some papers about the time Mr. Olmstead and I settled, and I could not find the papers that I looked for, and thought them and still think that perhaps I have then at home, but I am not at all certain about it. I have some papers in relation to real estate with me here, and those papers I put in the same package.

1636 Mr. Bailey, on behalf of Col. Totten and also on behalf of Messrs. Shellabarger and Wilson, counsel for Mr. Latta, reserved the general right of objection and cross-examination.

CHAS. H. ELDRIDGE.

At this point the further taking of depositions in this case was adjourned until July 14th, '82, at 7 o'clock p. m., to meet at the office of J. F. Olmstead, Washington, D. C

WM. T. S. CURTIS, *Examiner.*

Met pursuant to the above adjournment, but, the witness, J. F. Olmstead, not being present, adjourned until July 15th, at 3 p. m., to meet at same place.

WM. T. S. CURTIS, *Examiner.*

Met pursuant to the above adjournment, and adjourned until July 19th, '82, at 3 p. m., to meet at same place.

WM. T. S. CURTIS, *Examiner.*

JULY 19, 1882.

Mr. THOMAS J. FISHER, a witness for the complainant, being duly sworn, testified as follows:

Examined by Mr. HILLYER:

1 Q. Mr. Fisher, what is your business?

1637 A. Real estate broker.

2 Q. How long have you been engaged in the real estate brokerage business?

A. I entered into the business in 1852—from that down to 1865, and then I went to New York and there engaged in other business until 1878; from that time until now in the real estate business.

3 Q. Are you familiar with the general rules relating to the brokerage business and the general practice of brokers in executing that business?

A. Well, somewhat so.

4 Q. In the city of Washington?

A. I do not profess to know a great deal about what other brokers do.

5 Q. Do you know the general manner in which business is conducted?

A. I think I do.

6 Q. If real estate is placed in the hands of a broker for sale and there are incumbrances upon the property to be paid by the owner placing it for sale, and while the property was remaining in the hands of the broker the owner should transmit to him the

1638 necessary funds for the payment of interest or principal falling due on those incumbrances, and these payments should be made by the broker and the accounts thereof kept by him, would it or would it not be in the course of the practice of brokers to make a charge against the owner for that service?

A. So far as my experience goes, it would not if the property was in the hands of the brokers for sale.

7 Q. If, upon property so in the hands of the broker for sale, from funds transmitted for that purpose by the owner, the broker should, after ascertaining the correctness of bills for taxes upon the property, pay those taxes and keep an account of such payments, in accordance with the practice of brokers, would not that be made a charge to be charged as service rendered—charged against the owner as services rendered for him?

A. This is relating to property in the hands of a broker for sale?

8 Q. Yes.

A. It has never been my practice to make such charge, and
1639 have no knowledge of brokers making such a charge.

9 Q. Where property is in the hands of brokers for sale, the property being unimproved property, would it be in accordance with the practice of brokers to charge for preventing trespass made against that property, such as sidewalks taken from it or any injury to the property that might be done to it?

A. I have no knowledge of any such case in my own experience, or the necessity for any such services or of the charges being made; it has not been the case in my business.

10 Q. You have had a great deal of unimproved property in your hands for sale, I presume, Mr. Fisher?

A. Yes, sir.

11 Q. Do you know of any services that could be rendered in reference to protecting such property from trespasses?

A. Unimproved property? I do not know. I have no such experience, at least myself.

12 Q. Is it or is it not an advantage to a firm of brokers to
1640 have in their hands a large amount of property for sale, independent of the possibility or probability of obtaining commissions upon that particular property?

A. Yes; I should think so. It would give the concern a prestige in business having a large quantity of property for sale, even if they did not sell it.

13 Q. Suppose, Mr. Fisher, that in the years 1873, '4, '5, & '6, the panic years, a firm of brokers had placed in their hands property of the value of several hundred thousand dollars in the city of Washington for sale; that upon that property there was a considerable amount of incumbrance evidenced by notes secured by deeds of trust; that during the period of which I have spoken the owners of this property remitted to the brokers for payment of these incumbrances and for making other necessary payments in and about the property sufficient funds, so that at times the brokers had a balance of from three to eighteen thousand dollars placed not upon any special deposit, but to the credit of the general account of the
1641 brokers; that from these funds the brokers paid interest and principal falling due upon incumbrance, taxes also which fell due, and take such steps as were necessary—as to see that the taxes were correctly assessed and that they kept accounts in their books of these receipts and disbursements. Upon thes- facts I wish to ask you whether or not, if these services were performed by the brokers without charge to the owner, the arrangement would or would not be advantageous to the brokers?

A. Well, on general principles, I should think it would.

14 Q. Would be what? Would be advantageous?

A. Yes.

15 Q. Will you state your reasons for thinking it would be advantageous?

By Mr. OLMSTEAD: Did that question state that it was during the panic?

Mr. HILLYER: Yes.

A. I should say *that* the advantage of having a large amount of property for sale, with the chances of making commissions; the other would be of having a large amount of money swelling
1642 the bank account and the general prestige of having a large amount of property for sale.

16 Q. What do you say with respect to the prestige given of the fact of having and handling sev-ral hundred thousand dollars?

A. I should consider that an advantage. This is always considered a great advantage—keeping a good bank account and disbursing money.

17 Q. Doo you think that there would be any difficulty, if such terms could be proposed beforehand, in employing the best talent among brokers upon those terms?

A. I think not. I think any real estate firm in Washington would take the business on those terms.

18 Q. That is all.

Mr. OLMSTEAD: I suppose, Mr. Fisher, you will be subject to cross-examination.

A. All right, if you will let me know.

By agreement the right of cross-examination was reserved.

THOS. J. FISHER.

1643 Met at the office of Hillyer & Ralston, F St., Washington, D. C., Wednesday, 7.30 p. m., July 26, '82, pursuant to notice.

Present: C. J. Hillyer & J. H. Ralston, for the complainants; J. F. Olmstead appeared on behalf of defendants.

CURTIS J. HILLYER was thereupon called on behalf of complainants in rebuttal and testified as follows:

Counsel for complainants produces a bound volume of record of testimony in the case of Kilbourn & Olmstead *vs.* J. M. Latta, pending in supreme court of the District of Columbia, marked upon the outside cover Kilbourn & Olmstead *vs.* Latta, 5919, and in red ink, "Filed March 17, 1881, R. J. Meigs, clerk;" testimony for defendant, containing the original deposition of James M. Latta in said cause, and the same which was produced before the examiner of the previous examination in this cause of J. F. Olmstead, for the complainants, and the same respecting the signature to which the
1644 defendant Olmstead testified in the said previous examination, and offers in evidence from said volume the deposition of James M. Latta therein contained, commencing on page 20 of said volume and ending on page 211 thereof. The counsel for complainants, in addition to offering the whole of said deposition, offers in evidence specified the following extracts therefrom, marked extracts from deposition of James M. Latta in case *of case* of Kilbourn & Olmstead *vs.* Latta, 5919, supreme court D C.

(Obj.)—Mr. Olmstead, on behalf of defendants, objects to the introduction of said extracts, &c.

Examined by J. H. RALSTON:

1 Q. Did the firm of Kilbourn & Latta ever have the care and management of squares 66 and 93?

A. They had nothing to do with either of those squares until the summer of 1873, when they were placed in the hands of the firm for sale in the same manner as the property bought by Sunderland & Hillyer in 1872 had been placed there, and at the same time, at the suggestion of Mr. Latta, a deed for these squares was executed by myself and wife to J. M. Latta, trustee.

1645 2 Q. Mr. Olmstead has testified that the heard part of a conversation between yourself and Mr. Latta in 1873, and that he is under the impression that you in that conversation spoke of a charge of ¾ of one per cent. as compensation, being a round charge for care and management. Did you ever make such a statement?

A. I did not. I never mentioned or thought of a charge of ¾% or any other per cent. whatever as compensation for the services of defendants in relation to this property.

3 Q. Mr. Olmstead has in his testimony spoken of yourself and Sunderland as having failed in business in 1876. Is it true that there was any such failure?

A. It is not true, and there was never any reason for Mr. Olmstead or any of the defendants supposing it to be true. From the 1st of July, 1876, to July 1, 1881, I was employed as attorney for several mining companies upon the Comstock lode in Nevada, and received from those companies during that entire period an aggregate salary of ($1,550.00) fifteen hundred and fifty dollars

1646 per month, and during that five years I received for professional services outside of these salaries within a few thousand dollars of as much as the salaries amounted to. I was engaged up to 1879 in mining speculations on the Pacific coast, and up to Sep., 1879, I was successful in those operations and largely ahead. Up to that time I owed no debts, except when I had much more money or property than the amount of the debts. In the money crash of 1879 I lost a good deal of money, but I then incurred no debts but such as I afterwards paid without encumbering or having any recourse to my Washington property.

4 Q. Did you know of the fact that at the time of the dis-olution of the firm of Kilbourn & Latta there was an admitted balance to the credit of Sunderland and Hillyer of eighteen thousand dollars in the hands of Kilbourn & Latta?

A. I did not. I had no means of knowing it. No accounts were rendered to me showing the existence of this or any other balance, and no information was given to me from any member

1647 of the firm from which I could suppose there was this or any other considerable balance in their hands. I know that there were large amounts of money to be paid out, but I did not know what those amounts were. I trusted entirely to the firm of Kilbourn & Latta and to the statements of Mr. Latta after the dissolution of the firm as to the amounts of money required. I know

nothing about the state of the account or the amount of money which had been paid out by Kilbourn & Latta on our account until about the 1st of July, 1878, at some time between Nov., 1877, and July, 1878, I received from Kilbourn & Olmstead this account. (Witness presents the accounts and it is marked C. J. H. No. 1.) The account is in the handwriting of Mr. Olmstead. I received no other account from Kilbourn & Olmstead or from Mr. Latta until about the 1st of July, 1878, when the accounts which are in evidence were given to Mr. Sunderland and myself.

Mr. Ralston now offers the same in evidence.

1648 5 Q. Did you have a conversation with Mr. Olmstead about commencing suit in Indiana; and, if so, what was said?

A. About June, 1880, I remember telling Mr. Olmstead that I was about commencing suit against Latta, himself, & Kilbourn in the U. S. circuit court of Indiana to recover the amount charged for care and management. Mr. Olmstead stated that he was about to go out to Indiana, and that he did not wish service to be made upon him there, and I told him that he should not be served there, but I did not tell him nor in any way give him to understand that I did not hold him and Mr. Kilbourn legally responsible for this amount.

6 Q. Was there any difference in your feelings toward Kilbourn & Olmstead and towards Latta in reference to this charge for care and management; and, if so, what were your reasons for it?

A. There was a difference. When Sunderland and myself discovered in 1878 that this charge had been made and this
1649 money taken we were informed, or at least I was, that the charge had been made at the instigation of Mr. Latta. I was told and believed that Mr. Latta had acted very harshly towards K. & O. in the settlement at the time of the dissolution of the firm; that K. & O. were indebted to Latta at that time, and that the money taken under pretext of this charge for care and management, while credited to the firm, was in fact received by *me* Latta alone, thus leaving K. & O. the creditors of Sunderland & Hillyer. I was also told by Gen Jeffries, and I think by Kilbourn & Olmstead or by both, that Mr. Latta had cheated them in the management of the business of Kilbourn & Latta. I understood that Mr. Kilbourn had nothing left. I was told his furniture had been attached for a debt due Mr. Latta. I did not at the time consider that a judgment against Kilbourn would be of any value, and I know of no available property which Mr. Olmstead had for the reasons above stated. I did not feel differently toward Kilbourn & Olmstead then towards Latta. I looked upon Latta as the ringleader in the taking
1650 of the money, and I therefore felt a stronger determination to pursue him. I, however, never said a word from which either Kilbourn or Olmstead could infer that we did not intend to hold them legally responsible for the taking of this money under the charge of care and management; on the contrary, at the time of my going away, in July, 1878, they were both told that Mr. Sunderland and myself intended to commence suit for its recovery in

this District against all the members of the firm, we supposing that it would not be difficult to obtain service of process on Mr. Latta here.

C. J. HILLYER.

Nov. 18, 1882.

C. J. HILLYER, a witness recalled in rebuttal on behalf of the complainants, testified as follows:

By Mr. RALSTON:

7 Q. In the letter of General Jeffries which has been introduced in evidence in this case he speaks of an account having been sent you with the pleadings in the case between Kilbourn, Latta
1651 and Olmstead. What was that account?

A. It was an account of the firm of Kilbourn & Olmstead—that is, an account of the transactions of the firm of Kilbourn & Olmstead after the dissolution of the firm of Kilbourn and Latta. It was an account of the transactions between the firm of Kilbourn and Olmstead subsequently to the dissolution of the firm of Kilbourn & Latta. I never saw or received any account current of Kilbourn & Latta until Sunderland came here, in 1878, and requested that an account current should be furnished us, and it was furnished us after a delay of several days. The account which was sent me contained no charge for care and management, nor did I see any such charge until the account which I received in July, 1878.

Mr. WILSON: This answer is objected to because the witness is testifying therein as to what was contained in the account which he says was sent to him.

The WITNESS: I desire to state that that account is one of
1652 the exhibits in this case. The account of Kilbourn & Olmstead is an exhibit in this case.

Mr. WILSON: To which account do you refer now as the one which you say has been made an exhibit?

The WITNESS: I think it is Exhibit F, J. J. J., of the complainants. I will say I do not know whether that is the identical account which was sent or whether it was a copy of it, but that was the character of the account.

Cross-examination by Mr. WILSON:

8 Q. Do you or not say now that this Exhibit J. J. J. is the account that was sent to you with Mr. Jeffries' letter?

A. I am not positive that that is the identical account. I am positive that it was an account that purported to be an account of the transaction- of Kilbourn & Olmstead alone and was substantially the same as that account.

9 Q. That is, the account that was sent to you in General Jeffries' letter?

A. All the exhibits that have been introduced are not here. I think it was introduced in evidence and that the examiner
1653 has the exhibit. You now have another, purporting also to be an account of the transactions of the firm of Kilbourn & Olmstead. One of those two papers was sent to me at Virginia City, because I brought it here and had it among my papers. Then another one was furnished after Sunderland & Hillyer came here, I think, at some time.

10 Q. A moment ago you stated that this Exhibit J. J. J. was the account which was sent to you with General Jeffries' letter?

A. Yes, sir.

11 Q. Do you adhere now to that statement?

A. Certainly, with the explanations that I made at the time, that I was not certain whether that is the identical paper that was sent to me. There were two of those accounts and they both have been introduced in evidence, and it was one or the other that was sent to me and which I brought here from Virginia City, but which it was I cannot tell.

12 Q. Did he send you two to Virginia City?

A. No, sir; only one.

1654 13 Q. Are you familiar with Mr. Olmstead's handwriting?

A. I think I could tell it.

14 Q. (Handing witness a paper.) Is this Exhibit J. J. J. in his handwriting?

A. (After examining.) I think it is.

15 Q. You are not now certain, if I understand you, that this account is the account that was sent to you in General Jeffries' letter?

A. I have stated that I am not certain that that is the identical paper.

16 Q. Well, there was a paper sent to you by General Jeffries—an account?

A. Yes, sir.

17 Q. Whether this is the account or not you do not know?

A. I do not know whether it is this or whether it is the other exhibit, purporting also to be an account of Kilbourn & Olmstead, which is introduced in evidence. I know that it is an account of Kilbourn & Olmstead which I brought with me from Virginia City, and that we also found among my papers another account furnished to Sunderland & Hillyer after we came here. Which one of them is the one that I brought to Virginia City I do not know.

1655 18 Q. If this is not the account that was sent to you by General Jeffries, where is that account?

A. It is the other exhibit; it is on file with the examiner. The other exhibit to which I have refferred is Exhibit C. J. H. No. 1, attached to the rebuttal testimony.

19 Q. Now, I understand you to say that the paper that was sent to you by General Jeffries was either the Exhibits F, J. J. J., or C. J. H. No. 1, to which you have last referred?

A. Yes, sir.

20 Q. But which one it was you cannot tell?

A. No, sir.

21 Q. (Handing a paper to witness.) Now, take Exhibit C. J. H. No. 1, please. I find in General Jeffries' letter the following paragraph, on the 29th of August: Where I have placed the star on the "account, the account of K. & O., handwriting of Hillyer, see the sum $5,200." Do you find anything of that kind on that account?

A. No.

22 Q. Is there anything of that kind in that account.

A. I think not.

1656 23 Q. Now, take this other, Exhibit F, J. J. J., and tell me whether there is anything of that kind in that account.

A. No, sir. I know because I have looked at them before.

24 Q. So that neither of the accounts that you have now spoken of as being one or the other — the account- that was transmitted to you by General Jeffries contains any such identifying mark as is described in the letter of transmittal?

A. No, sir.

Redirect examination by Mr. RALSTON:

25 Q. State the reason for your positiveness in the identification of these accounts.

A. My only reason is that when I came to examine my papers with a view to seeing what evidence we had in this case I found among them these two accounts of Kilbourn and Olmstead; I found no other. I remembered that at Virginia City I received an account with the firm of Kilbourn & Olmstead; that I did not receive any other account than that, and I take it for granted that one of those papers is the paper which I received at Virginia City. I

1657 never observed the paper carefully enough so that I could swear to an identification of it. When General Jeffries' letter was read I looked over both of these accounts to see if the mark which he spoke of was there and I did not find it upon either. It is possible that I have spoken too positively about these being the identical papers. I can speak positively that if neither of these is the paper it was a paper purporting to contain the same account.

Recross-examination by Mr. WILSON:

26 Q. Do you find on either of these papers any such item as is mentioned by General Jeffries—that $5,200?

A. I did not look for it.

27 Q. I would be glad to have you do so.

A. The accounts will show for themselves whether it is there. I can find it if it is there.

28 Q. Now, I ask you to produce the paper that was sent to you by General Jeffries containing that item of $5,200, with the mark upon it indicated by General Jeffries' letter.

1658 A. I have no such paper; I have no other account in my possession than the account of J. M. Latta, trustee; no other account except what has been produced in evidence and is among the exhibits.

29 Q. Do you wish to be understood as denying that General

Jeffries ever sent to you an account containing such an item as is described in his letter and marked as described in his letter?

A. No, sir; it is quite possible that the paper which he sent me did contain that item and those marks.

30 Q. And if the paper he sent you did contain it you have not produced it in evidence in this case?

A. No, sir; and I have not got it, nor have I seen any such paper since I had occasion to look for evidence in this case.

31 Q. You do not wish to be understood as denying that General Jeffries sent to you a paper with that letter and that you received it?

A. Not at all; on the contrary, I know that he did. I remember receiving with the pleadings an account, and I remember what the account purported to be. I do not remember of any marks
1659 about the account by which I could identify it. I took it for granted, on finding one of those two accounts in my possession, that it was one of those two, of course. The fact that it does not contain these marks raises some doubt about that.

32 Q. That was a mere argument or conclusion of yours when finding these papers, not from any independent recollection of the facts?

A. Yes, sir—that is, the only fact I remember independently was what the character of the account was—that is, what it purported to be.

Re-redirect examination by Mr. RALSTON:

33 Q. I hold in my hand an agreement, marked Exhibit C. J. H. No. 2, which purports to be signed by William M. Stewart. I ask you if that is his signature.

A. (After examining.) Yes, sir; that is his signature.

Mr. RALSTON: I offer this paper in evidence.

Mr. WILSON: I object to its being offered in evidence, because it is illegal, irrelevant, incompetent, and not properly executed.
1660 That I put in simply as formal at present, because if he assents to it we will put a little stipulation on there at that point.

The WITNESS: I will state with regard to this paper that all of it is in my handwriting except simply the signature. By mistake I put the witness clause at the end of the second page instead of at the end of the third page. I suppose it was signed by Mr. Stewart without looking at it.

Mr. RALSTON: The pages are not properly arranged; that is all.

By Mr. RALSTON:

34 Q. I hold in my hand two telegrams addressed "C. J. Hillyer" and signed "J. M. Latta." What do you know with regard to these telegrams?

Mr. WILSON: Question objected to because they are not competent evidence, being only what purports to have issued from the telegraph

office and not purporting to be any original paper signed by Mr. Latta.

The WITNESS: These are original telegrams received by me in Virginia City, from the telegraph office there, in the year 1877, at about the time of their date.

1661 Mr. RALSTON: I offer in evidence the telegrams referred to, and ask that they be marked Exhibit- C. J. H. Nos. 3 & 4.

Mr. WILSON: The introduction of which telegrams is objected to because they are not competent evidence, the witness having stated that they were papers that were delivered to him by the telegraph company, and there being no pretense that these papers were signed by Mr. Latta; and for the further reason that they are immaterial to the issues in this case.

CURTIS J. HILLYER.

SATURDAY, *November* 18, 1882.

Met pursuant to notice.

Present: Messrs. Hillyer & Ralston, counsel for the complainants, and Mr. Wilson, of counsel for the defendant.

Hon. ARTHUR MACARTHUR, a witness on behalf of the complainants, being first duly sworn, testified in rebuttal as follows:

By Mr. HILLYER:

1 Q. In the spring of 1871 you associated with other persons in the city of Washington for the purpose of purchasing real estate?

A. Well, I think it must have been at a later period than
1662 1871 that I became interested in this enterprise. It is possible that I might have heard of it in 1871. How long it had been agitated before I became aware of the business I cannot tell.

2 Q. What was that association called?

A. I do not know that it had any name. I cannot recall now that it was known by any name that was assumed by the parties to the business. I believe it was spoken of as the Real Estate Association, but I do not think it ever assumed any particular name by any action of the body—by any action of the members.

3 Q. Who were the members of the association besides yourself?

A. Jay Cooke & Co. and a man by the name of Parker, the Hon. Charles E. Eldredge, and there were others whose names I cannot recall.

4 Q. Was P. M. B. Young a member?

A. Yes; Mr. Young, of Georgia.

5 Q. And Secretary Belknap?

A. I forgot about Belknap, but I have a dim recollection that he was one of the parties.

6 Q. What was your interest in the association?

A. Well, now, if you will let me make a brief statement of how I became connected with it, it will, perhaps, be the quickest
1663 way. Previous to this time I did my banking business at the First National Bank in this city. I had a continuous

deposit at that time, and, knowing very little about investments in the city here, I was in the habit of consulting Mr. Huntington, who was the cashier of that bank, and I had an arrangement with Mr. Huntington by which he was to advise me from time to time about making suitable investments. With the exception of the one in question they were loans upon securities, trust deeds upon real estate. He informed me that several gentlemen contemplated making contributions to a fund for the purpose of purchasing real estate—my own impression now is that that was in the spring of 1873, but I will not be sure about it—and he advised me to become interested in it. He explained the scheme by which the work was to be carried on; that the fund was to be deposited, I think, in the First National Bank; that Kilbourn & Latta were to make the purchases, and afterwards, at convenient times, to make the sales of the property thus purchased. It resulted in my subscribing to this fund $5,000.

7 Q. You put in that amount of money, did you?

1664 A. I put in $5,000. Well, of course, before my subscription I had conversations with Kilbourn & Latta at their office in this city, and, for the purpose of carrying out the object, I think a power of attorney was executed to Mr. Kilbourn alone as trustee. The object of authorizing him to make the purchases on behalf of this association was for the convenience of taking title and conveying title. After I had contributed my $5,000 in cash—I will go back a moment to say I think I was in Wisconsin and I sent my check from Wisconsin for $5,000, payable to the order of Mr. Huntington, as it was through him I really transacted that business. That check was paid. I got it through the bank. I speak now from recollection. That check was drawn upon the First National Bank, where I had my deposit.

8 Q. How were Kilbourn & Latta to be compensated for making these purchases?

A. I understood the arrangement to be that they were to act as brokers and to receive the usual commissions. In the spring—very early in the spring—of 1875, there having been no returns made——

Mr. HILLYER: Judge, I think you are getting these dates a little confused.

1665 Mr. WILSON: That is all right; it does not matter about the dates.

Mr. HILLYER: I will just state to you, Judge, that the date, as stated by Mr. Olmstead, of his purchase of your interest is December, 1873, I think. You seem to have the whole time shoved ahead a couple of years.

The WITNESS: I have but one memorandum by which I can correct that (referring to a memorandum). I am right. I am quite sure I am right. I can fix this date by a check I gave at the time. When I sold out I advanced $5,000 more to the firm—not to the association, but to the firm—and the $5,000 added to that made $10,000. I assigned my interest in the association to Kilbourn and Latta, and they gave me a note for $10,000 and a trust deed to secure

it upon a house on M street. Now, the date of that check which I gave them for the additional $5,000 is February 15, 1875. Well,

1666 this matter had been going on for about a period of two years, and, as I said, no return had been made, and interest was beginning to fall due on the trust deeds which they had executed in making purchases for unpaid purchase-money, and they talked of making an assessment. I had been much disappointed in the fact that no report of sales had ever been made or no return had ever been made, and I expressed my wish to sell out. The result was that they made this purchase of me. I assigned my interest, and that is the last I had to do with it.

9 Q. What did you get for your interest?

A. I got $5,000 in the way which I have just explained.

10 Q. With or without interest?

A. Without interest. I remember now I did get a little interest upon the sum of $5,000 that I advanced. There was a margin of time between the consum-ation of this assignment of mine and the time when it was first arranged that we should do it, and during that period I got interest on the $5,000 I advanced.

1667 11 Q. Might it not have been the case that your agreement of sale to Kilbourn and Latta was at an earlier date than the transaction of which you speak?

A. I think it was earlier. It was not really consum-ated though until in February, 1875, I fancy—not from the date of my check.

12 Q. That is, the payment for the interest was not made until then?

A. No.

13 Q. Did you ever hear any time after you were a member of the association of an arrangement or agreement by which Killbourn and Latta were to have, in addition to their commissions for making these purchases, a one-half interest in the profits which should be made upon those purchases?

A. No, sir.

14 Q. Was any person connected with the association authorized to make such an arrangement, so far as your interest was concerned?

1668 A. Well, the only person that could ever have made such an arrangement on my behalf was Mr. Huntington, and I do not remember giving any such instructions to him.

15 Q. If the knowledge of any such arrangement had come to your knowledge you would remember it, would you not?

A. Why, I think so; yes.

16 Q. Were you informed during the time that you were connected with that association of the sales of property belonging to the association having been made by the firm of Kilbourn & Latta?

A. I do not remember that I was ever so informed. I made inquiry, and I think the general answer was that there was so little demand for real estate that they were deferring sales.

17 Q. Did you hear anything about square 156?

A. Well, I cannot tell you, sir. I did not know much about the

divisions of the city at that time, and I have no recollection of any particular square or lot ever having been mentioned to me.

18 Q. If you had been told——

A. What was the square?

19 Q. Square 156. If you had been told that that square had been sold at a profit of $27,000 would you not remember that fact?

1669 A. Yes; I think.

20 Q. I understand, then, that you speak confidently that you were not so informed?

A. I do not remember about any particular locality having been mentioned to me. I can only state generally that my recollection is no sales of any locality were ever reported to me.

21 Q. At the time you sold your interest did you know that there had been any sales made?

A. No, sir.

22 Q. At that time——

A. If I knew it I entirely forgot it.

23 Q. At that time was there any account presented to you of the transaction of this association?

A. There was no account.

Cross-examination by Mr. WILSON:

24 Q. This arrangement that you entered into, as I understand you, Judge, was effected, so far as you were concerned, through Mr. Huntington?

A. Yes; in the first instance.

25 Q. He acted as your agent, so to speak, in this transaction?

1670 A. Yes, sir; I executed the instrument, I think.

26 Q. So far as negotiations are concerned, whatever was done in that regard was done by him?

A. Well, in the first instance, of course, before I executed this power of attorney, I made inquiry and informed myself about the business.

27 Q. This was a speculative enterprise, was it not?

A. Purely so.

28 Q. The purpose of which was to buy real estate and sell it?

A. Yes, sir; there was no idea of a permanent investment with me.

29 Q. Of course, then, of what transpired between Kilbourn & Latta and Mr. Huntington you have no personal knowledge?

A. I do not know that I ever was present at a conversation between those parties about this matter.

30 Q. You do not know, then, what the arrangement was that was made for the compensation of Kilbourn & Latta or what interest they were to have in this speculative enterprise?

1671 A. I supposed, by my conversations with Kilbourn & Latta, that they claimed only the usual compensation that brokers received as commissions.

31 Q. Now, did you know anything about any reinvestment being made? Were the reinvestments all to be made at one time or was it to be a sort of continuous transaction?

A. They were to be made in the discretion of Kilbourn & Latta. The carrying out of the details of the business, as I understood it, was to be left with Kilbourn & Latta. I do not think the contributors took any part in that business; I know I did not.

32 Q. In other words, then, this was a fund that was created by these subscriptions, to which you have alluded, placed on deposit to be used by Kilbourn & Latta in this speculative enterprise?

A. Yes; in the purchase of real estate and in its sale.

33 Q. Do you know whether they contemplated reinvestment in the event they deemed it advisable to make investment of money derived from sales of property?

1672 A. Well, I could not say how that was. I do not remember that there was any arrangement about that; I think quite likely, however, that would have been within the agency.

34 Q. There might have been reinvestment made under the circumstances under which this business was conducted without your knowledge about it?

A. I knew nothing about it.

35 Q. Did you ever give any attention to the details of it at all?

A. No; I knew nothing about it; I trusted the whole management entirely to the firm.

36 Q. Do you know about what time the depreciation in real estate in this city took place?

A. I would be a very poor witness upon that point.

37 Q. Can you remember when Jay Cooke & Company failed?

A. I remember that very distinctly.

38 Q. About what time was that?

A. I think it was in September, 1873.

39 Q. On the 18th of September, 1873. I had my deposits pretty well up just at that time—not in Jay Cooke & Company—

1673 my deposit — the First National Bank. They closed about the same day, I believe.

40 Q. Do you remember that soon after the panic that ensued upon that failure there was a general depreciation in the values of real estate in this city?

A. Oh, yes; I have a knowledge of the general fact. I think it did not commence, however, until about the spring of 1874.

41 Q. And from that time forward for two or three years there was really no market for real estate in this city excepting it should be disposed of at a loss? You recollect that general fact?

—. Yes, sir; I saw so few real estate transactions myself that I really could not tell you about the demand for real estate, but I know that there was a general depreciation of property all over the city, unless it was in some favored localities that I do not know anything about.

42 Q. Now, in consequence of this general depreciation of values, as you understand it, the property of this Real Estate Association—for all will call it by that name—was not disposed of?

A. That was my understanding, that there was no demand
1674 for real estate at that time.

43 Q. The obligations of the association on account of deferred payments were maturing and they wanted an additional — made up; is not that so?

A. Yes, sir.

44 Q. And now, in consequence of that, I will ask you to state whether you did not propose to those gentlemen, Kilbourn and Latta, that you would take your money with the interest on it and retire from the concern?

A. I made that proposition.

45 Q. And then it was accepted by them?

A. Well, it was modified so as to simply include the principal without the interest. They did not pay any interest on the investment.

46 Q. In other words, you agreed with them to take the money that you had put in?

A. I agreed with them to take $5,000 and *and* assign my interest to them.

47 Q. And that was done?

A. Yes, sir.

48 Q. Can you tell about how long before you finally consum-ated this, by giving your check and taking their note and a deed
1675 of trust, as you have described, this arrangement was under consideration?

—. Some weeks. I could not be definite about that. I know they paid me interest upon the $5,000 I advanced at the time for some period back before it was paid, on account of the fact that the agreement had then been entered into but not consum-ated.

49 Q. Was it some time before they gave you their note for $10,000? (The witness hesitated.) You are not able to state?

A. No; I cannot state. I could hunt up a note, perhaps, that might enable me to speak very accurately; but they paid some interest on that $5,000—nearly $100 I think.

50 Q. State whether you knew of any of the purchases that were made by Kilbourn and Latta on account of this Real Estate Pool.

A. I did not.

I desire to make a correction in my testimony in regard to the time when I contributed the $5,000. Upon examination of
1676 the check for that amount, which I have found since my testimony was given as above, and which was dated, I think, in July, 1871, I am now clear that that was the time I became interested in this association.

ARTHUR MACARTHUR.

JOHN BULL, a witness on behalf of the complainants, being recalled in rebuttal, testified as follows:

By Mr. KILLYER:

1 Q. (Handing witness a book.) Will you look at Exhibit "D" of complainants' exhibits in this volume, being an account current of

Sunderland and Hillyer with Kilbourn and Latta from June 26th to December 30th, 1876, and see in whose handwriting that exhibit is?

A. (After examining.) That exhibit is in my handwriting.

2 Q. When did you make it out?

A. My recollection is I made that account out in the spring of 1878.

3 Q. Was it before or after Sunderland and Hillyer came to Washington from the Pacific coast?

A. I think it was after.

4 Q. Is there any doubt in your mind about that matter?

1677 Mr. WILSON: I object to that question.

The WITNESS. Well, no; I have not any doubt about it. This is barely possible. I may be mistaken about it, but I have no doubt in my mind that I made that account out in the spring—either June or hereabouts—of 1878.

5 Q. Did you make out, from the time you went out of the firm of Kilbourn and Latta and until Sunderland and Hillyer came here in 1878—did you make out for them or for any one any account current of Sunderland and Hillyer, or either of them, for Kilbourn and Latta?

A. I do not remember whether I made any account for them after I left their employment. Some little things I did, but I do not remember making any account current for them after I left their employ until after Sunderland and Hillyer arrived here from the Pacific coast in the spring of 1878.

6 Q. Could you have made out such account during that
1678 period and have now forgotten it?

A. Well, yes; I might have done it, but it does not seem to me I could have done so. I might possibly have made out such an account and forgotten it, because my memory is getting somewhat treacherous, but I do not think I should have made it and not remember it.

7 Q. At whose request and for whom was it made?

—. It was made for Sunderland and Hillyer, at their request; that is my recollection.

8 Q. How came you to make out the account current?

A. It must have been because I was asked to do so by Mr. Olmstead. I have a recollection, I believe tolerably clear, that he requested me to make out that account and put the books of the firm into my hands for that purpose.

9 Q. Do you know whether after Sunderland and Hillyer came here in 1878 there were accounts current made out for them with the firm of Kilbourn & Latta?

1679 A. I think those account- were made at that time—after they came here.

10 Q. Do you remember about the circumstances?

Mr. WILSON: I object to that, and wish to state that counsel for the defendants objects to any interview between Sunderland and

Hillyer, or either of them, and the witness in the absence of the defendants.

The WITNESS: They came here and expressed to me their desire to make a settlement of their affairs between themselves; in other words, to agree upon some division of their property between themselves. They consulted me on that subject, and my recollections is that I advised them as the first act necessary to procure accounts current from the firm of Kilbourn and Latta of all their dealing, and also from Latta's trustee.

11 Q. Do you remember how long it was before those accounts were completed after they had been requested?

A. I cannot state how long. I know some days intervened.
1680 I know there was some delay in getting the accounts ready, and I remember they were rather disturbed by the delay they had encountered in that respect—waiting for the accounts current.

Cross-examination by Mr. WILSON:

12 Q. What is your age?

A. I am about sixty-three years old.

13 Q. Do you remember of a litigation having been commenced between Kilbourn and Olmstead on one side and Latta on the other?

A. Yes, sir.

14 Q. Do you remember when that began?

A. No, sir; I could not tell now without some reference. I could not tell from what is on my mind when it began.

15 Q. Well, give the date as near as you can.

A. I do not know. I have nothing in my mind by which I can fix that date.

16 Q. Do you remember making out an account current of
1681 this business at that time?

—. I do not know. I do not remember it. Still I cannot say that I did not.

17 Q. Do you not recollect now that Kilbourn and Olmstead, or Mr. Olmstead, called on you at that time to make out an account current of the business of Sunderland and Hillyer?

A. It may be so, but I cannot recollect.

18 Q. Where were you when you made out this account?

A. In my office in the Corcoran building.

19 Q. And you had the books down there?

A. Yes, sir; that is my recollection—I had them there.

20 Q. Do you recollect making out any accounts current at all at the time that litigation occurred between Kilbourn and Olmstead and Latta?

A. No; I do not recollect the fact of making out accounts current. I had something to do with it, but I don't know what it was. They called upon me for some information. I do not know whether
I made out accounts current or whether I was simply
1682 called upon to state certain facts with reference to this case.

21 Q. Do you not recollect going over the books at that

time and making out statements of accounts current in regard to this business?

A. I have been over the books so many times that I can hardly identify any one particular time. I may have gone over their books for the purpose of refreshing my memory as to certain facts that they wanted to establish; that, I think, is altogether likely.

22 Q. Is it altogether likely that you made an account current at that time?

A. I should say it was merely possible that I did, but I do not remember.

23 Q. Do you not remember making out an account current for the purpose of showing the balance as to this Sunderland and Hillyer account?

A. No; I do not remember it.

24 Q. Do you not recollect that it transpired that up to the time of the dis-olution of the firm of Kilbourn and Latta there
1683 was a balance of about $18,000 in favor of Sunderland and Hillyer?

A. Yes; I suppose I knew that at all times. I kept the books up to a certain period, and I must have known about their balance. I think I do remember the fact that there was a balance of some considerable amount due the firm either from Sunderland and Hillyer or Thomas Sunderland or jointly. I think I do remember the fact that that was the case.

25 Q. Now, do you not remember making out an itemized statement of that account showing that balance?

A. No, sir; I do not.

26 Q. You cannot remember it?

A. No.

27 Q. You do not say you did not do it?

A. No; I do not say I did not, but I do not remember it. I could have arrived at the balance without making out such an account.

28 Q. Do you remember going over the answer of Latta
1684 and the bill that had been filed by Kilbourn and Olmstead and also the bill that had been filed by Latta at that time?

A. I remember having something to do with Mr. Latta's answer, I think. Yes, sir.

29 Q. Do you not recollect going over the bill that was filed by Kilbourn and Olmstead?

A. Yes; I think I went over it in a certain way. I believe I made a copy of that bill on my type-writer, and I think I was familiar both with the bill and the answer at the time.

30 Q. For whom did you make that copy?

A. I made a copy of the bill for Olmstead and a copy of the answer for Latta, I think; or it may be that *a* made a copy of the answer for Olmstead and a copy of the bill for Latta. I know I made a copy of one for me and the other for the other, but for which
1685 I made each copy I do not now remember.

31 Q. Now, do you or not remember going over the books at that time and making out the statements?

A. It is altogether likely that I went over the books. I do not

remember the fact, but I think it is altogether likely I went over those books, because I was to be interrogated on certain points and I needed to refresh my memory by looking over the books. I remember there were several questions put to me and I was asked to answer those questions, and I think I did, and my knowledge would have been refreshed, certainly, by examination of the books.

32 Q. You do not pretend now to give accurately the time when you made out that paper?

A. No; my only recollection about it is that that paper was made for Sunderland and Hillyer, at their request, after they arrived here from the Pacific coast.

1686 33 Q. Might you not have made out two papers of that kind, one a year or two before that which you have furnished?

A. Yes; it is possible. I cannot say that I did not do it, but I do not remember it.

34 Q. And the two being taken from the books, as a matter of course would correspond in the items?

A. I do not know any reason why they should not be exactly alike if they were taken from the books.

JOHN BULL.

1687 Nov. 18, 1882.

AUGUST MÜLLER, a witness on behalf of the complainants, being first duly sworn, testified in rebuttal as follows:

By Mr. HILLYER:

1 Q. Mr. Müller, did you sell some property to Hillyer and Stewart in 1871?

A. Yes, sir; I sold it to you.

2 Q. That is, to Hillyer?

A. Yes, sir.

3 Q. Square 66, was it not?

A. Yes, sir.

4 Q. What was the purchase price?

A. $25,000.

5 Q. How much was paid on it?

A. 5,000.

6 Q. How was the balance secured?

A. I held a note for the balance, which was secured by a deed of trust on the square.

7 Q. What interest did that deed bear?

Mr. WILSON: I object to that question.

The WITNESS: Six per cent.

1688 (By Mr. HILLYER:)

8 Q. Besides the original unimproved ground was there any addition made to your security by the erection of an expensive dwelling house by Mr. Hillyer on the same property?

A. Yes, sir.

9 Q. Was that house covered by your deed of trust?
A. Yes, sir.
10 Q. What time was the principle of the note which you held from the balance of the purchase-money on that square to be paid?
A. In five years.
11 Q. From about June, 1871, was it?
A. Yes, sir.
12 Q. Up to that time did you have any trouble about the payment of interest on your note?
A. No, sir; I never did. The interest was paid promptly every time it was due.
13 Q. Did you consider your security ample for that note?
A. Certainly; it was worth three or four times the note.
1689 14 Q. Did you ever express to anybody any anxiety with regard to the security of that note?
A. No, sir; I never could do it.
15 Q. To whom did you look to pay that note?
A. To you, Mr. Hillyer.
16 Q. Did you ever look to Kilbourn and Latta for the payment of it?
A. No, sir; I never looked to them.
17 Q. Did you ever suppose they were in any way responsible for any of it?
A. No; I only looked to Mr. Hillyer.
18 Q. Did you ever say to them that you thought they were responsible for my portion of it?
A. No, sir.
19 Q. At the time when the principle fell due was it all paid?
A. No, sir; afterwards it was paid.
20 Q. How did it come that it was not all paid? Was there any arrangement made about it?
A. There was an arrangement. I let the money out for five years.
21 Q. Did you have any conversation with Mr. Hillyer about letting the principal stand?
1690 A. I told him I could let it stand, and he said any time I wanted any money I could have it.

Mr. WILSON: I object to that answer.

(By Mr. HILLYER:)

22 Q. Did you find that to be so?
A. Yes, sir.

Cross-examination by Mr. WILSON:

23 Q. You say you were paid your interest promptly?
A. Yes, sir.
24 Q. From whom did you get the money?
A. In the bank. The interest was all the time paid in the bank on the note in the bank.
25 Q. I want to know who paid the money to you?

A. It was paid by Latta in bank, except the last time. Mr. Bull got it in hand and he paid me the last time.

26 Q. So that all the money that was paid to you was paid through Mr. Latta?

A. Yes, sir.

1691 27 Q. Was there anything paid on the principal of this note?

A. There was no money paid in five years on this note of $20,000.

28 Q. But after the five years was there anything paid on the principle?

A. Yes, sir.

29 Q. Who paid it?

A. Latta.

30 Q. When you wanted interest on this note on whom did you call?

A. I never called for interest. I went over to the bank. My note was there. I went to the bank every time interest was paid.

31 Q. When you wanted part of the principle after the note matured on whom did you call?

A. On Mr. Latta.

32 Q. How many times did you call on him?

A. About five or six times.

33 Q. You do not know where Latta got the money from to pay the interest, nor to pay the principle, do you?

A. No, sir.

34 Q. You do not know anything about how much trouble he had to get the money?

A. No, sir.

1692 35 Q. You know that you got your interest as it matured?

A. Yes, sir.

36 Q. And you know that after the maturity of the notes you called on Mr. Latta repeatedly for the money on account of the principal?

A. Yes, sir.

37 Q. How much were you delayed in getting that money?

A. At one time I had to wait two or three weeks. That was the only time I had to wait.

Redirect examination by Mr. HILLYER:

38 Q. Did you ever make any complaint to Mr. Latta or express any dissatisfaction with the way in which you received your payments?

A. Never. I was all the time satisfied. At one time I was pushed. My carpenters wanted their money, as they had finished a house for me, and I had to wait two or three weeks before I got that money.

AUGUST MILLER.

1693 J. H. RALSTON, a witness called in rebuttal on behalf of the complainants, being duly sworn, testified as follows:

By Mr. HILLYER:

1 Q. State whether you served this notice on counsel for the defendants.

(Mr. Hillyer handing paper to the witness.)

A. I served that notice by leaving a copy of it at the office of Shellabarger & Wilson on the date named in the notice, which is August 2, 1882.

2 Q. How about service on Mr. Totten?

A. The service on Mr. Totten was made in the same way, by leaving a copy at his office.

3 Q. At the same time?

A. On the same day.

(Addressing himself to Mr. Wilson.)

Mr. HILLYER: I ask again for the production of the letter referred to in this notice, of which "Exhibit M," attached to the testimony-in-chief of the complainant, is a copy.

Cross-examination by Mr. WILSON:

4 Q. You say you served that notice by leaving a copy of it at the office of Shellabarger and Wilson. Did you call the attention
1694 of Mr. Shellabarger to it?

A. Well, I have served several notices there, and do not recollect as to this, whether there was any one in the office or whether I left it on Judge Wilson's table. I served one or two notices by slipping them under the door when it was locked, and this notice may have been served in that way.

5 Q. Now, as to Colonel Totten, did you serve it personally upon him?

A. As to Colonel Totten, my recollection is that I went into his office and left the notice on his desk. He was out of his office at that time.

Mr. HILLYER: I reoffera copy of the letter, "Exhibit M," attached to the complainant's testimony-in-chief.

Mr. WILSON: Objected to, because no sufficient notice has been given for the production of the original.

The notices referred to above were offered in evidence, marked J. H. R. Nos. 1 and 2.

J. H. RALSTON.

1695 In Supreme Court of the District of Columbia.

SUNDERLAND
vs.
KILBOURN *et al.* } Equity No. 7764.

I, Wm. T. Curtis, examiner in the above-entitled cause, do hereby certify that, pursuant to authority reposed in me by this honorable court, I did take the testimony of the witnesses hereto annexed at the times and places therein specified and set forth; that the said witnesses were by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause; that the answers and questions were written down stenographic-ly in my presence, and, after having been written out, were read over by said witnesses and by them signed, respectively, in my presence. I further certify that, being unable to see and get Mr. Fleming to sign his testimony, I have herewith signed the same for him, & so return the same. I further certify that I am not related to any of the parties interested in this suit, nor am I attorney or counsel for any of the parties as aforesaid. My fees for taking the same are $68.00, which are just and reasonable, and were paid by the complainants.

WM. T. S. CURTIS, *Examiner.*

1696 *"Extracts from Deposition of J. M. Latta in the Case of Kilbourn & Olmstead vs. Latta, 5919, Supreme Court D. C." W. T. S. Curtis, Examiner.*

In the Supreme Court of the District of Columbia.

KILBOURN & OLMSTEAD
vs.
LATTA. } No. 5919. Equity Docket 17.

JUNE 8, 1880.

Met by agreement, in the evening, at the office of Shellabarger & Wilson.

Present: Wm. F. Mattingly, Esq., for the complainants; Jeremiah M. Wilson, Esq., for the defendant.

JAMES M. LATTA, having been duly sworn, testified as follows:

By Mr. WILSON:

* * * * * * *

P. 33 *et seq.*

43 Q. When did Mr. Olmstead, if ever, become interested in this firm, and state what his interest was?

A. My recollection is that it was in May, 1871. His interest was one-fourth of the profits—I think, perhaps, I had better explain that afterwards—and, perhaps, before the thing was definitely settled we permitted his interest to date back to the 1st of January, the arrangement having been made in May.

* * * * * * *

P. 43 *et seq.*

1697 59 Q. What was Mr. Kilbourn's financial condition at the time Mr. Olmstead was admitted?

A. I know of nothing of any consequence that he had, and I know that he owed, as I supposed, about $2,000; I have been told anyway that he did.

60 Q. Did he have any means in excess of his liabilities?

A. I should think not.

61 Q. What was Mr. Olmstead's financial condition at the time that he was admitted?

A. I did not know of anything that he had at all.

62 Q. What had he been doing prior to that?

A. He had been a clerk for me and the firm for about six years on a salary.

63 Q. Was there any dissolution of the firm of Kilbourn & Latta at the time that Mr. Olmstead came in?

A. There was not.

64 Q. What was your financial condition at the time that Mr. Olmstead came in?

A. I had a good deal of property; a large, well-improved farm in Indiana entirely free from any encumbrance. I had considerable property here in the city. I owned the house in which I
1698 have been living on K street, between 14th & 15th. I had some lots and I had considerable money—I don't pretend to say how much—and I ordinarially paid cash for all the real estate I bought. I supposed I was worth $50,000.

* * * * * * *

P. 50.

90 Q. A letter of yours has been produced during the progress of this examination, dated 2d of August, 1871, in which this language is used: "We should crowd our purchases." What was meant by that?

(Objected to by complainants' counsel.)

A. It was meant that we should crowd the purchases — were authorized to make for others.

91 Q. For whom at that time were you authorized to make purchases?

A. We were authorized to make purchases for the Real Estate Association, and, I think, by Hillyer and Stewart; I don't know whether Sunderland had yet come in with them or not. It did not refer to purchases for members of the firm.

* * * * * * *

Page 52.

96 Q. Had the firm any resources from which to get money except its commissions?

A. None, I believe, unless the individual members of the firm put the money up, which they never did in any case.

* * * * * * *

1699 Page 56.

112 Q. The 95th question put to Mr. Olmstead in his examination-in-chief is as follows: "Please state what you know relative to lots 34, 35, and 36, in square 445, in this city, being the Thyson matter referred to in the bill of complaint." Have you read his answer to that question?

A. I have.

113 Q. What have you to state in relation to that answer? And give the facts in regard to the transactions.

A. His answer is simply a fiction, pure and unadulterated; he never had the slightest thing to do with Mr. Thyson that I know of.

* * * * * * *

Page 60 *et seq.*

118 Q. There has been a good deal said in the course of this case about certain real estate that was sold to Sunderland and Hillyer. Will you explain about that?

A. I can only understand this from your question—that it refers to 7 or 8 pieces of real estate bought really for Sunderland and Hillyer in May and June, 1872, but which entered into the account of Kilbourn, Latta, and Olmstead, aggregating something like $18,000 or $20,000.

Mr. WILSON: That is what I refer to.

1700 The WITNESS: It figures in the account of Kilbourn, Latta, and Olmstead, but was really purchased for Sunderland and Hillyer and turned over to their account and deeded to them within a few days afterwards—say, probably, 10 or 15 or 20 days afterwards.

119 Q Please state when the Sunderland and Hillyer property was acquired, giving a description of it, and when the conveyances were made to Sunderland and Hillyer.

A. 1872, May 9; lot 10, sq. 158; deeded to Sunder. & Co. June 14, 1872.

1872, May 23; lot 17, sq. 158; deeded to Sunder. & Co. June 15, 1872.

1872, May 30; lot 9, sq. 158; deeded to Sunder. & Co. June 14, 1872.

1872, June 1; lot 8, sq. 158; deeded to Sunder. & Co. June 19, 1872.

1872, June 14; lot 17, sq. 69; deeded to Sunder. & Co. July 1, 1872.

1872, July 8; lot 16, sq. 69; deeded to Sunder. & Co. July 30, 1872.

120 Q. State the facts in relation to the purchase and sale of the property in square 242.

A. That property was bargained for by the orders of the Real Estate Association. There was delay in the execution of the deed on account of it having to go back and forth to Europe twice, and in the meantime we found that we could sell the Vermont avenue front at about 25 per cent. profit, and did bargain it away. We then took

that portion of it ourselves and turned over the rest of it
1701 to the Real Estate Association, so that an item of $40,000 of purchases of Kilbourn & Latta is comprised in that; $33,000 of it we sold before the deed returned, and we never had invested a dollar in it.

121 Q. No firm capital was used in it?

A. No firm capital was used up to that time.

122 Q. How many purchases that were made by the firm, if any were made, without knowing just what you were going to do with the property and how you would get rid of it?

A. There were seven during the existence of the firm that were made for what you might call investment; all the others we knew just where we were going to put them before we bought.

123 Q. Do you remember what cash payments were made on those 7 pieces?

A. $4,774. Those are the purchases made from the 13th of June, 1871, to June 7th, 1874, as investments.

124 Q. When we meet again I will ask you to give a list of those seven pieces to which you have referred. I wish you to state now whether those purchases were made in the ordinary course
1702 of the business of the firm, or whether they were the subject of special arrangement and consultation, or what you would call special ventures at the time they were made.

A. Each of them was a special venture and each was made after consultation and agreement by each member of the firm.

* * * * * * *

WEDNESDAY, *June* 9, 1880.

* * * * * * *

Pp. 64 & 65.

126 Q. Was either member of the firm authorized to make purchases of real estate, and bind the other members of the firm without their consent?

A. They were not.

127 Q. Was ever any such thing attempted during the course of the partnership business?

A. There was not.

* * * * * * *

JUNE 11, 1880.

* * * * * * *

P. 96.

215 Q. State what the business of that firm was (the firm of Kilbourn and Latta).

A. It was buying & selling real estate on commission, renting houses, and I don't know but what at first it comprised the business of auctioneers; but, if so, we abandoned that very soon, and
1703 I don't know that, in fact, it ever did comprise that.

* * * * * * *

Pp. 145, 146.

Cross-examination by Mr. MATTINGLY:

401 X Q. You have stated several times in the course of your direct examination that the scope and character of this copartnership business after January, 1871, was not such as is set up in the third paragraph of the bill of complaint in this case. You have read in the deposition of Mr. Kilbourn and Mr. Olmstead their statements as to interviews held with you, in which they state substantially that you insisted that the agreement should be such as is contained in this third paragraph of the bill. Do you mean that you never did insist, as testified to by them?

A. I do.

402 X Q. And that those interviews, as detailed by them, are substantially untrue?

A. They are.

* * * * * * *

P. 150.

421 X Q. In answer to the 90th question, in explaining the expression in your letter of August 20th, 1871, relative to crowding purchases, you state that it was meant "that we should crowd purchases we were authorized to make for others." Were
1704 you authorized at that time to make any purchases for any other parties than the Real Estate Association?

A. I do not know positively. I think we were authorized to make purchases for Stewart and Hillyer. I don't think Sunderland was yet in the concern; he may or he may not have been.

* * * * * * *

P. 154 *et seq.*

441 X Q. In stating, in answer to the 95th question of your direct examination, that the firm had no capital at that time with which to make purchases, do you mean that the firm had not the means of making purchases if it had desired to?

A. Yes, sir; I do.

442 X Q. Look on pages 16 and 17 of Mr. Olmstead's deposition in this cause and state whether that is a copy of a letter written by you on the 26th of May, 1872, from Altoona.

A. Yes, sir; I think it is.

443 X Q. In that letter you recommend the advisability of large purchases by the firm for its own benefit. How were those purchases to be made, if the firm hadn't the means of making them?

A. With the view of turning them over to Sunderland and
1705 Hillyer, knowing that that was one of the squares that they were talking about purchasing.

444 X Q. What square do you refer to?

A. The only square I suggest purchasing there in that letter—153.

445 X Q. What would the purchase-money of that square have amounted to?

A. We could have bought it for a very small payment down. I don't know that the sum was definitely settled and I didn't know that we could do it all, but it was simply one of the things I wanted to be inquired into.

446 X Q. What do you mean in this letter by stating that "I would suggest getting the refusal for 10 days instead of purchase for S., H. & S. of lots 2 & 3, 15 & 16, in square 68, of Riggs?"

A. Because I did not want the purchase to be made, because it was likely to affect other property that we wanted to secure for Sunderland and Hillyer in that neighborhood. I preferred getting the refusal for them rather than purchasing for them.

447 X Q. In this letter you district the northwestern section of the city for the benefit of the several parties named therein and state, "after the opportunity has been given each, and they decline, then the property can be offered any other, but first reserving the
1706 right to purchase ourselves." What did you mean by that?

A. It was contemplated to extend some time into the future, and did not alone contemplate that day, but to district the city off, which condition might run for six months or a year; and in the event that we were in a condition to purchase we should reserve the right to purchase. It was laying out a plan which should extend unlimitedly as long as these people were authorizing us to purchase, and if we were in a condition to purchase, and I thought it advisable, we should purchase.

448 X Q. You did in point of fact as a firm, after the 1st of January, make large purchases for the firm, did you not?

A. We did not.

449 X Q. Do you know what property the firm did purchase?

A. The members of the firm joined individually in making a good many purchases; but as for purchasing for the firm they never did. There never was an instance where it was not made a special venture, and each party was consulted as to whether he wanted to go in or not. The proposition of purchasing property was a
1707 thing that was talked over very often, but as a firm no one ever purchased property for the firm and undertook to bind the firm as a firm.

450 X Q. That was not the object of my question. Did not Kilbourn, Latta, and Olmstead, after the 1st of January, 1871, make large purchases of real estate for the benefit of themselves in proportion to their interest in the firm?

A. They purchased at the same ratio with the interest that each had in the firm, but each instance was an individual agreement.

451 X Q. To what extent were such purchases made?

A. I can't state without some memoranda.

452 X Q. Can you not approximate the aggregate of the amount purchased?

A. Without being able to state definitely, I should think it was about $14,000 that they purchased for themselves.

453 X Q. You now allude, I presume, to purchases made by them at the time of the purchase, not having any particular disposition of the property in view, do you not?

A. Yes; exclusive of the purchases that were made in view
1708 of turning them over to Sunderland and Hillyer, exclusive of the purchase that was made in square 242, where it was purchased by the Real Estate Association, and finding that we could sell $33,000 out of $40,000, we sold it and took it.

454 X Q. Including all the purchases made by Kilbourn, Latta, and Olmstead, whether they knew what disposition was to be made at the time or not, what was the aggregate amount of the purchases?

A. I should think $74,000 or $75,000, perhaps.

455 X Q. Was it not nearer double that?

A. No, sir.

* * * * * * *

P. 161.

460 X Q. How and under what circumstances generally were these purchases made that were made by Kilbourn, Latta & Olmstead?

A. When property was offered for sale and they thought it was a bargain they would generally talk it over, and if they found themselves in a condition to purchase, and each member of the firm had agreed that it was a good purchase to make and expressed his willingness to go in, the purchase was then made.

* * * * * * *

P. 162 *et seq.*

467 X Q. What do you mean by "when the firm was in a condition to purchase?"

1709 A. When they had the money.

468 X Q. If you thought the purchase a very desirable one did you not make the purchase when you did not have the money?

A. Not for ourselves; no.

469 X Q. When you had an opportunity of placing it somewhere else?

A. Then we took the money of the party whom we expected to place it with, when it was in our possession, as it was in several instances, and made the purchase and turned it over to them within a reasonable time.

470 X Q. Were there not instances when you had not money in your possession belonging to parties to whom you could sell it, and still you made purchases?

A. I think not. It may be possible that we might have had money ourselves and not their money, but knew that we could get it whenever we drew for it, and thought we would make his purchases and use our own money; but the parties whom I specially refer to we knew that we could get the money from whenever we drew for it.

* * * * * * *

P. 171 *et seq.*

490 X Q. In the list given by you in answer to the 119th ques-

tion, as to when the Sunderland and Hillyer property was
1710 acquired and when conveyances were made to Sunderland and Hillyer, I cannot understand clearly from your testimony whether in that list you mean to include property which was purchased by the firm for Sunderland and Hillyer and not for the benefit of the firm or of the individual members comprising the firm. How is that?

A. The firm took a profit on it, although it was property designated by Sunderland and Hillyer for us to purchase at a certain price. We purchased it at a less price and took the difference as profits, but in every instance it was property which we were authorized to purchase for them at a price beyond what we paid.

491 X Q. Then, as I understand it, this was property which you had been authorized to purchase by Sunderland and Hillyer, for which you were at liberty to go a certain figure, and in point of fact purchased the property at a less price and conveyed it to them at the figure designated by them. Is that it?

A. Exactly.

492 X Q. Whose money was used in making these purchases?

1711 A. Generally Sunderland and Hillyer's; as I say, there may have been some one instance where there was not enough money to their credit for that purpose, and we used other money, knowing that we could get the money by calling on them for it or drawing for it at any time.

493 X Q. You simply advanced the money for their benefit?

A. We did not advance the money generally; generally it was their money.

494 X Q. You say the*ir* may have been some few instances where they hadn't the money to their credit. In those instances you advanced the money for their benefit?

A. We advanced the money to make the purchase. We took some of the benefit out of it ourselves.

* * * * * * *

Pp. 173, 174.

497 X Q. Were the conveyances of this property taken to the firm or to any member of the firm and then conveyed to Sunderland and Hillyer afterwards, or were the conveyances made directly to Sunderland and Hillyer from the original owners?

A. They were not made directly to Sunderland and Hillyer.

* * * * * * *

P. 177 *et seq.*

1712 511 X Q. In answer to the 120th question relative to the purchase and sale of property in square 242, as I understand your testimony, it is substantially this, that you were authorized to make that purchase by the Real Estate Association, and, pending the delay in the execution of the deed (which had to cross the ocean and back twice), you found you could sell the Vermont avenue front

at an advance of some 25 per cent. and take that front for the benefit of the firm, and the balance for the Real Estate Association. Is that the case?

A. Took it for the benefit of Kilbourn, Latta & Olmstead; yes.

512 X Q. And you mean to say that the firm did that transaction?

A. Yes. By the "firm" you mean Kilbourn, Latta, and Olmstead?

Mr. MATTINGLY: Yes.

The WITNESS: It is simpler to use the word "firm," I suppose, if it is understood that that is what is meant.

Mr. MATTINGLY: When I speak of the "firm" I mean Kilbourn, Latta, & Olmstead, and I have no objection to the examiner stating on the record that I do not want to commit the witness to the "firm" instead of "the individual members of the firm."

1713 513 X Q. Did it occur to you at that time that there was anything improper in that transaction?

A. There were considerations about it (which I am not at liberty to divulge, because it affects others) that relieves it from any impropriety.

* * * * * * *

Pp. 182, 183.

520 X Q. In these purchases made by the firm for its own benfit did you not use money belonging to the firm, and also money belonging to customers of the firm in the possession of the firm?

The WITNESS: Not knowing what we were going to do with it?

Mr. MATTINGLY: I do not mean not knowing what you were going to do with it or knowing.

The WITNESS: There was a difference. When we bought knowing what we were going to do with it we ordinarily used the money of parties in our hands or of others, because we knew we could turn it over and have the money; when we bought not knowing what were going to do with it we always used money of our own, I think.

* * * * * * *

P. 186.

527 X Q. Did Sunderland & Hillyer designate in advance
1714 which they desired you should purchase for them or did they rely upon the exercise of the judgment of the firm?

A. They designated that lots anywhere along this front or that front or in this square should be bought at, say, 50c. a foot, for instance, and other lots at 20c. a foot.

DR. *Sunderland and Hillyer in Ac. Current with Kilbourn and Olmstead.* CR.

1876.				1876.			
Dec. 27	To cash p'd Nat. Met. Bank, int. on $22,000 (secured by $25,000 6% gold bonds) to date		$356 88	Dec. 30	By bal. of % with Kilbourn and Latta as per % current assumed by us		$3,053 11
1877.				1877.			
Feb'y 5	To cash p'd R. I. Fleming on order of H. A. Willard, six mos.' int., to Dec. 4, '76, on $ —, sqr. 151		565 94	Apr. 13	By am't sale sub 34, sqr. 156, sold to Institution for Education of Colored Youth & credited on note on sq. 115		8,000 00
"	To cash p'd G. W. Riggs, 1 yr. int. on bal. of $40,000, viz., $10,000, unpaid, on sqr. 195		700 00	July 9	By cash rec'd from J. M. Latta		1,000 00
12	To cash p'd 1st ½ gen. tax as follows:						
	Sqr. 66, of 1 & 2, all 3, 4, 5, 6, 7, & 8	154 50					
	Sqr. 67, 3, 4, & 5	32 03					
	" 93, all	332 98					
	" 97, of 10, S. 18 to 25	34 57					
	" 115, all	477 73					
	" 134, S. 27 to 49	79 12					
	" 155, all	409 76					
	" 156, "	580 52					
	" 158, 3, 8 of 9, 10, 17 of 21	182 72					
	" 195, 11 to 25	299 59					
			2,583 52				
17	To cash p'd F. D. Lewis, adm'r, sq. 93		2,000 00				
Apr'l 13	To cash p'd J. M. Latta, trustee, to pay int. on $50,000, sq. 156		2,000 00				

C. J. H. No. 1. *W. T. S. C.*—Continued.

1877.							
Apr'l 13	To am't credited on note of $32,000, secured by deed of — on sqr. 115, proceeds of sale, sub 34, sq. 156		8,000 00				
"	To commission on sale, sub 34, sq. 156		265 00				
June 12	To getting release & certificate (Gillet), sqr. 134		6 25				
16	To cash p'd Evans & Bro. (grading), sqr. —		600 00				
30	To cash p'd Evans & Bro. (grading), sqr. —	760 00					
	Cash p'd Morsell, measurer	5 00					
			705 00				
July 2	To cash p'd telegrams		1 70				
9	" " " water-main tax—						
	Sqr. 66, lots 3, 4, 5, 3d inst.	142 26					
	" 93, " 14, 2d "	64 27					
			206 53				
	Amount carried for'd		$17,990 82		Am't carried for'd		$12,057 11
	1716						
1877.	Am't bro't for'd		17,990 82		Amount bro't for'd		12,053 11
July 9	To cash p'd water-main tax—						
	Sqr. 93, 1, 15, 16, 17, 4th inst.	157 15					
	Sqr. 115, 11, 4th & 5th inst.	64 47					
	" 115, 5 to 10, 4 "	259 46					
	Sqr. 151, S. 139 to 149, 3d inst.	101 32					
	Sqr. 151, S. 115 to 138, 3d inst.	179 63					
	Sqr. 151, S. 17, 18, 19, 23, 24, 27 to 38, 1st inst.	118 32					

		Sqr. 158, 3 of 21, 1st inst.	61 32	
		" 195, 11, 12, 13, 4th inst.	78 10	
		" 195, 25, 3 inst.	23 72	
				1,043 49
	14	To cash p'd Evans & Bro. (grading)	500 00	
		To commissions attending (grading), &c.	100 00	
				600 00
	17	To cash p'd Evans & Bro. (grading)		500 00
Aug.	20	To copy deed of trust & certificate, sq. 151		5 50
	24	To cash p'd J. M. Latta, T., to pay % grading sq. 156, 158		263 19
	29	To S. T. G. Morsell, measurer		59 51
Oct.	1	To cash p'd N. L. Jeffries, sqr. 151		1,000 00
	5	To Republican, adv. sqr. 151		42 00
	9	To cash p'd N. L. Jeffries, bal. cash payment, sqr. 151		1,500 00
Nov.	2	To cash p'd J. M. Latta, trustee		80 00
				23,084 51

1717 C. J. H. No. 2. W. T. S. C.

Whereas in the month- of May and June, 1872, I was jointly interested with Thomas Sunderland and Curtis J. Hillyer in the purchase of a number of parcels of real estate situate in the city of Washington, Dist. of Columbia, including all of square 115, all of square 156, all of square 155, and certain lots in square 158, my interest in said purchases being a one-fourth interest; and whereas in December of the same year, by a verbal agreement between myself and the said Thomas Sunderland, I assigned & transferred all my interest in said purchases to said Sunderland, and signed & returned to him a bill of sale of all my said interest; and whereas it was at the time agreed & understood between myself & said Sunderland, although not fully *experienced* in said bill of sale, that the transaction was simply a substitution of said Sunderland for myself as purchaser of said one-fourth interest, & that he, the said Sunderland, should succeed to all my rights & obligations in respect to said purchases in the same manner and to the same extent as if he had been the original purchaser thereof:

Now, therefore, for the purpose of further declaring & carry-
1718 ing out said agreement, I hereby sell, assigns, & transfers to said Sunderland all rights or causes of action which at the time did *occur* to me or have since *occurred* to me by reason of said purchases, or arising out of the same or of any transactions connected therewith, against any person whatsoever, and I particularly assign & transfer to said Sunderland any and every claim, demand, or right — action which I may have or which, but for said verbal agreement, I might have had against James M. Latta,——

Witnesses my hand this 31st day of Oct., A. D. 1882.

WM. M. STEWART.

—Hallet Kilbourn, & J. F. Olmstead, or either of them, or the firm of Kilbourn & Latta, growing out of their connection with the said purchases, & I authorize said Sunderland, in his own name & for his own benefit, to sue for & collect the same as fully as I myself may do or might have done; and whereas I am informed that a suit is now pending in the supreme court of the District of Columbia, wherein the said Thomas Sunderland & Curtis J. Hillyer
1719 — pl'ffs & the said Latta, Kilbourn, and Olmstead *our* def'ts, in which the pl'ffs seek to recover damages on account of alleged frauds of the def'ts in connection with the said purchases, I hereby authorize the att'ys of the pl'ffs to enter my appearance therein and a disclaimer by me of any interest in or claims in connection with any of the causes of action set forth in the bill of complaint.

C. J. H. No. 3. W. T. S. C.

Western Union Telegraph Company.

The rules of this company require that all messages received for transmission shall be written on the message blanks of the company

under & subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following message:

Jas. Gamble, gen'l sup't, San Francisco; William Orton, pres.; A. R. Brewer, sec'y, N. Y.

GOSHEN, IND., —— 30, 1877.

Received at Virginia City July 30, 1877, 5 p. m.

To C. J. Hillyer:

Kilbourn says Willard will be paid.

J. M. LATTA.

1720 C. J. H. No. 4. W. T. S. C.

Western Union Telegraph Company.

The rules of this company require that all messages received for transmission shall be written on the message blanks of the company under & subject to the conditions printed thereon, which conditions have been agreed to by the sender of the following message:

Jas. Gamble, gen'l sup't, San Francisco; William Orton, pres.; A. R. Brewer, sec'y, N. Y.

GOSHEN, IND., *July* 22, 1877.

Received at Virginia ——, Nev., July 22, 1877, 4 a. m.

To C. J. Hillyer:

Money left in hands of K. and O. to pay Willard; will ask explanation.

J. M. LATTA.

14; collect; half rate. W.

J. H. R. No. 1. W. T. S. C.

HILLYER & RALSTON, ATTORNEYS-AT-LAW,
WASHINGTON, D. C., *Dec.* 15, 1881.

In the Circuit Court of the United States within and for the District & State of Indiana. In Equity.

THOS. SUNDERLAND, C. J. HILLYER, Compl.,
vs.
J. M. LATTA, Defendant. } No. 7248.

1721 J. M. Latta and his attorneys:

You are hereby notified to produce the original of a certain letter addressed to J. M. Latta, dated Virginia City, Dec. 6, '77, and signed by C. J. Hillyer, if in your possession, that the same may be offered in evidence by the above-named complainants; otherwise secondary evidence of the contents of the same will be introduced.

JACKSON H. RALSTON,
Complainants' Attorney.

I hereby acknowledge service of the above notice by receiving a copy of the same this 15th day of December, A. D. 1881.

SHELLABARGER & WILSON,
Att'ys of J. M. Latta.

J. H. R. No. 2. W. T. S. C.

In the Supreme Court of the District of Columbia. In Equity.

THOMAS SUNDERLAND & C. J. HILLYER
vs.
HALLET KILBOURN, J. F. OLMSTEAD, & J. M. LATTA. } No. 7764.

To the defendants and their solicitors:

You are hereby notified to produce to the said court or to
1722 the examiner in said cause the original of a certain letter addressed to J. M. Latta (defendant) and signed by C. J. Hillyer (one of the complainants) and dated December 6, 1877, and being the same letter a copy of which has already been produced and offered in evidence before the examiner in connection with the testimony of said Hillyer as a witness herein, to the end that the said original may be introduced as evidence for complainants in said cause, and if you fail to produce the said original complainants will prove the contents of the same by the said copy or other secondary evidence thereof.

J. H. RALSTON,
Solicitor for Complainants.

WASHINGTON, D. C., *August 2nd*, 1882.

Served the within notice by copy upon Enoch Totten, Esq., solicitor for Kilbourn and Olmstead, defendants, and Shellabarger & Wilson, solicitors for Latta, defendant, this 2nd day of August, A. D. 1882.

J. H. RALSTON.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

J. H. Ralston, being first duly sworn, on his oath deposes and says that the return of service as above made to the within notice is true and correct.

J. H. RALSTON.

1723 Subscribed and sworn to before me by the said J. H. Ralston this — day of October, A. D. 1882.

——— ———.

T. S. No. 23. W. T. S. C.

Hallet Kilbourn. James M. Latta. J. F. Olmstead.

Office of Kilbourn and Latta, real estate and note brokers, corner 15th and G streets.

WASHINGTON, D. C., *Aug.* 2*d*, 1872.

Judge Sunderland, San Francisco, Cal.

D'R SIR: Your telegram was duly received. We found it would cost you $250 or 1% to draw on you through the ordinary channels, and therefore took the liberty of asking you to place the funds in N. Y. to our credit. A telegram from Messrs. Lee & Waller, received yesterday, advised us that $25,000 was in their hands, subject to our draft, and we accordingly drew on them for that amount.

Davis, who owns S. E. ¼ of square 92, won't take less than 40c. We had a loan on it of $2,000, at 10% interest, due July 21st, and thought we might press him to take a decent price by calling for it, but he said he would borrow the money in another place be-
1724 fore he would consent to take less than 40 cents. We have let the money lay, and have the refusal of the lot until we can hear from you. He has 17,958 square feet, and his lot completes the square. He wants $3,183.20 cash, $2,000 in 2 y'rs, & $2,000 in 3 years, with 5% interest, pay'l. semi-annually. What shall we do about it?

We have bought that part of square 67 owned by Mix and Cassin, viz: Lots 1 & 2, at 30 cents; lots part of 6 and all of 8, 12, 13, 14, 15, 16, and 19, at 25 cents, ⅓ cash, balance in 1, 2, & 3 years, at 6% interest, payable semi-annually, amounting to about $21,000—$7,000 cash. We have sent deed to Bright for execution for square 138.

Truly yours, KILBOURN AND LATTA.

T. S. No. 24. W. T. S. C.

WASHINGTON, D. C., *July* 18, 1872.

Judge Sunderland.

D'R SIR: I have this day subscribed for $10,000 of the capital stock of the Connecticut Avenue railroad, subject to your approval. The whole amount of capital stock to be issued by the company is $50,000, on which instalments amounting to 25 per cent. only will be called in. Stewart's friend, John W. Thompson (president of the Metropolitan R. R. Co.), who is getting up the thing, says that
1725 is all that will ever have to be paid, and that it will be the best railroad stock in the District. It will only require an outlay of $2,500 on your $10,000 of stock, and Thompson says it will be worth a large premium in a short time. The charter was granted by Congress, three years since, from H street, along Conn. avenue, to Boundary. Congress having stopped the building of those roads whose charters were granted by the District Legislature,

it is proposed to build this road under the old charter and head off the others. If they then want to come in over this track they must do so on such terms as the company choose to make. The two notes given to George Taylor, for $6,500 each, on square 115, and due in 1 & 2 years from May 30, 1872, he wants to sell and will take 2 per cent. off. They draw 6 % interest, which will make it a little over 8 %. Don't you want them?

Truly yours, J. M. LATTA.

T. S. No. 25. W. T. S. C.

WASHINGTON, D. C., *June 22d*, 1874.

Thomas Sunderland, Esq., San Francisco, Cal.

1726 D'R SIR: We enclose herewith a statement of money needed to pay indebtedness on the real estate of which we represent you as trustees up to September first. This includes certain taxes, as stated, which should be promptly paid. We shall have to call on you by telegram for a portion of this sum before we will have time to get a reply to this by mail. Under the change of government for this District, as per enclosed bill just passed by Congress and approved by the President, we feel that the future of Washington is permanently assured, and that real property, after this year, will take a step forward with strides heretofore unknown. We all feel jubilant over the fact that hereafter the District of Columbia is to be under the exclusive control of the United States Government. It will now be developed and improved by large general appropriations.

Respectfully yours, KILBOURN AND LATTA.

T. S. No. 26. W. T. S. C.

WASHINGTON, D. C., *July 13th*, 1872.

D'R SIR: Bright is here and says he will take $20,000 nett to him for square 138. The taxes against it and commissions will
1727 make it amount to $26,500, or about 37½ cents per foot. There is in it 70,695 sq. ft. He wants $15,500 cash and balance in 1 & 2 years, with 7 per cent. int. We have the refusal to the 1st of August. Shall we take it? I do not hesitate to say you should, but decline to take the responsibility. The price at which I purchased it before you went away was $25,000. ⅓ cash, balance 1 and 2 years, at 7 %. You can telegraph reply. We can get ⅞ of square 65 △, all except that marked black. The extreme point will fall into your hands this fall. Lot 2 cannot be had at present. The taxes on lot 1 are more than the lot is worth to the owner, and he will let it be sold. That will take about $7,000. We have bought two lots in sq. 69, for which we have paid out for you $2,300. To cover all will take about $20,000, and, as we want to be prepared for anything else which may drop in our way, you had, perhaps, better

send us $25,000. Notwithstanding the hot weather, real estate still goes up, and there are more purchasers than sellers.

Very truly yours, KILBOURN AND LATTA.

No. 1.

Judge Thomas Sunderland, in care of Bank of California, San Francisco, Cal.

1728 N. L. J. No. 1. W. T. S. C.

N. J. Jeffries, attorney-at-law.

WASHINGTON, D. C., *Sept.* 25, 1877.

DEAR HILLYER: At the instance of "Hal." and Olmstead I telegraphed you to-day not to allow yourself to be worried about the Willard payment. Kilbourn & Olmstead have the money to pay it, but they have not done so, because in their settlement with Latta he agreed to convey his interest in the firm property to them, and they will neither pay this $5,500 to him nor to Willard until he signs the deeds. In the meantime the debt to Willard has matured and the land advertised for sale. The fight is between them, and will not effect your interest. I have their assurance that your rights will be taken care of. Latta is the party who should have paid Willard and settle his firm quarrel without troubling you; but no matter what he may do or refuse to do "Hal." & Olmstead will take care of your interests. You will not lose a cent nor a foot of ground, so do not let it annoy you.

Yours, as ever, JEFFRIES.

Please treat this as confidential.

JEF'S.

1729 N. L. J. No. 2. W. T. S. C.

WASHINGTON, D. C., *Nov.* 26, 1877.

DEAR HILLYER: I enclose copies of the pleadings between Kilbourn & Olmstead & Latta. The answer of Latta to our bill has not yet been filed. I enclose also a copy of the account of Sunderland & Hillyer. On the 29th of August (where I have placed the * on the ac.) the amount on K. & O.'s hands belonging to S. and Hillyer was some $5,200. The exact amount is stated in our answer. On that day, and before the sale of the Willard square, K. & Olmstead offered Latta the money and offered to pay it to Willard, but he refused to receive it unless Kilbourn would surrender to him Latta's obligation for about $5,000 or $5,500, which he then and still holds, which indebtedness arose out of the Meridian Hill property, owned by John Sherman and Kilbourn and Latta, Latta having sold a large portion of the property or turned it in in the purchase of his house. These papers will show you exactly how the ac. between these parties stand. I felt it my duty to you, aside from

my connection with the case as an attorney, to let you under-
1730 stand how matters are going forward. I did not intend that you and Sunderland should be brought into litigation with Kilbourn & Olmstead without knowing that you were in court at all or that your money should be used to fee lawyers to fight your best friends. In fact, I do not believe that Mr. Latta has any authority to sue as your trustee. If you want any security from Kilbourn and Olmstead that they will do what is right I will send you a bond in any amount. You will observe that there is still in K. & O.'s hands some $2,700 of S. & Hillyer's money, but they must pay it out for taxes, as the 2 per cent. penalty begins on the first day of December. Please regard this as confidential. But I am very anxious that you will say to me, if the fact is so, that Mr. Latta has not been authorized to sue Kilbourn and Olmstead. The sale of lots I wrote as just having been sold is suspended, the examiner having reported that the suit instituted by Latta (as your trustee) is a cloud on the title. This stops the erection of a fine house immediately opposite your property—square 157.

Yours as ever, JEFF.

1731 In the Supreme Court of the District of Columbia. In Equity.

SUNDERLAND & HILLYER
vs.
KILBOURN, LATTA, and OLMSTEAD. } No. 7754.

It is hereby stipulated—

1st. That —the time of the transfer of the interest of W. M. Stewart to plaintiff Sunderland in Dec., 1872, the only writing executed by either party was in form a bill of sale, signed by said Stewart, conveying, for a specified consideration, all of his (Stewart's) interest in all of the property owned by him jointly with Sunderland and Hillyer or with Hillyer. It did not purport to transfer any choses in action.

2nd. The suit of Sunderland and Hillyer *vs.* J. M. Latta, in the United States circuit court for the State of Indiana, was commenced June 20, 1881, and the suit of Thomas Sunderland *vs.* Latta, in the same court, was commenced June 22, 1881.

3rd. The written agreement offered in evidence by plaintiffs No-
vember 18, 1882, and dated October 31, 1882, having the
1732 signature of W. M. Stewart on the second page, shall have the same force as evidence as if the same had been signed by him at the end of the agreement on the third page instead of on the second page.

SHELLABARGER & WILSON,
Att'ys of Latta.
ENOCH TOTTEN, *Att'ys of K. & O.*
HILLYER & RALSTON,
Att'ys of Complainants.

1733 *Order that Case be Heard in Gen. Term in 1st Instance. Filed Feb. 23d, 1883.*

In the Supreme Court of the District of Columbia, the 23d Day of February, 1883. In Equity.

THOMAS SUNDERLAND *et al.*
vs.
HALLET KILBOURN *et al.* } No. 7764.

It is, this 23d day of February, 1883, ordered that this cause be heard in the general term in the first instance.

CHARLES P. JAMES, *Justice.*

We consent to the forgoing order.

ENOCH TOTTEN,
Att'y for Kilbourn and Olmstead.
SHELLABARGER & WILSON,
Att'ys for Latta.
JOHN SELDEN, *Of Sol's for Compl'nts.*

Appearance & Disclaimer for Stewart. Filed Nov. 1, 1883.

In the Supreme Court of the District of Columbia, the 1st Day of November, 1883. In Equity.

SUNDERLAND *et al.*
vs.
KILBOURN *et al* } No. 7764.

The clerk of said court will please enter my appearance
1734 herein for William M. Stewart and my disclaimer for him of all right and cause of action on his part against the defendants or any of them on account of any of the matters set forth or involved in this cause.

JOHN SELDEN,
Sol. for Wm. M. Stewart.

Motion to Dismiss. Filed Mar. 24, 1884.

In the Supreme Court of the District of Columbia. In General Term.

SUNDERLAND and HILLYER
vs.
KILBOURN *et al.* } Equity No. 7764.

Motion to dismiss for want of jurisdiction.

And now comes the said defendants and moves the court to dis-

miss the above cause for want of jurisdiction, because the said complainants have a plain, adequate, and complete remedy at law.

ENOCH TOTTEN,
SHELLABARGER & WILSON,
Sol'rs for Def'ts.

1735 *Final Decree. Filed Jan. 9, 1885.*

In the Supreme Court of the District of Columbia. In General Term.
In Equity.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN, JAMES M. LATTA, and JOHN F. OLMSTEAD. } No. 7764

This cause came on to be heard upon the bill, the amended bill replications, answers, stipulations, and evidence, and, having been argued by counsel and fully considered by the court, it is thereupon, this 6th day of January, 1885, ordered, adjudged, and decreed as follows:

1. That the complainants have and recover against the said defendants the sum of five thousand three hundred and nineteen $\frac{55}{100}$ dollars, with interest thereon from the seventh day of June, A. D. 1872, until paid, being the profit unjustly and illegally de-
1736 tained by the said defendants from the complainants arising out of the purchase of square No. one hundred and fifty-five, in the city of Washington, D. C.

2. That said complainants also have and recover of the said defendants the sum of three thousand three hundred and sixteen dollars, with interest thereon from the 8th day of June, A. D. 1872, until paid, in respect of profit made by the said defendants in the purchase of square No. one hundred and fifty-eight, which profit justly and in equity belongs to the said complainants.

3. That the said complainants do have and recover of the said defendants the further sum of eight thousand two hundred and sixty-three $\frac{33}{100}$ —, with interest thereon from the 12th day of December, A. D. 1876, till paid, being the amount allowed for overcharge made by the defendants for care and management of complainants' property and retained by them out of moneys of the complainants in the
1737 hands of the defendants, contrary to equity and good faith.

4. That the complainant, Thomas Sunderland, individually (in pursuance of the stipulation of the parties filed in this cause), do have and recover of the said defendants the sum of five thousand nine hundred and seventy-three $\frac{33}{100}$ dollars ($5,973.33), with interest thereon from the 12th day of December, A. D. 1876, until paid, being the amount hereby allowed in respect of overcharges for care and management of property belonging to said Sunderland individually and withheld from him by the said defendants, contrary to equity and good faith.

5. That, further, in pursuance of the stipulations aforesaid, the

said complainant Sunderland individually do have and recover from the said defendant Latta individually the sum of sixteen hundred and seventy-two $\frac{85}{100}$ dollars ($1,672.85), with interest thereon from the 1st day of July, 1878, till paid, being the sum now
1738 hereby allowed in respect to overcharges for care and management of said complainants' property by the said defendant Latta and retained by the said Latta from the said Sunderland, contrary to equity and good faith.

6. That, further, in pursuance of the said stipulation, the said complainants do have and recover of the said defendant Latta individually the sum of two thousand eight hundred and thirty-eight $\frac{92}{100}$ dollars ($2,838.92), with interest thereon from the first day of July, A. D. 1878, till paid, being the sum hereby allowed in respect of overcharges made by said Latta for care and management of their property and which has been retained by said Latta, contrary to equity and good faith; also the further sum of twelve hundred and thirty-five $\frac{79}{100}$ dollars ($1,235.79), with interest thereon from the 1st day of July, 1878, till paid, being the amount of money retained by the said Latta from moneys of the complain-
1739 ants in his hands, contrary to equity and good faith.

And, lastly, that the complainants do recover of the defendants their costs in this suit, to be taxed by the clerk.

By the court:

A. WYLIE.

Petition for Rehearing. Filed Jan. 22, 1885.

In the Supreme Court of the District of Columbia. In Eq.

SUNDERLAND and HILLYER *vs.* KILBOURN, LATTA & OLMSTEAD. } No. 7764.

Petition of Hallet Kilbourn, James M. Latta, and John F. Olmstead, defendants in the above-entitled cause, for a rehearing therein, and for reasons therefor they assign the following:

First. Because the complainants base their claim to recover upon an alleged contract between them and said defendants, and each and every claim and demand set forth in their bill and amend-
1740 ments thereof (except that relating to charges made by defendants against complainants for care and management) was made upon the basis of said alleged contract as having occurred thereunder, and the court, having held, in its opinion delivered in this cause, that the said alleged contract was void, there could be no recovery on account of any of the said items under the said pleadings. Before any of the items sanctioned by the opinion of the court could be allowed, in any event as to the said items, under the well-established rules of procedure in the equity courts, an amendment would have been indispensible, and without amendment such allowances cannot properly be made.

Second. According to the rule laid down by the court as to squares

115 and 156 (see opinion pp. 7, 8, 9), the item claimed in the bill in reference to square 155, to wit, $5,319.55, should be excluded from the computation. This square was purchased from Burgess
1741 for the joint account of Charles A. Eldridge and the defendants. This is sworn to by all the defendants, and the account books and other evidence show that Eldridge received his share of the profits, $2,000, and these facts are not contradicted by any evidence in the record.

Third. The same rule referred to in the next preceding paragraphs of this petition should be applied to lot 10, in square 153.

By the uncontradicted evidence of the defendants in this case this lot had been purchased by the firm and had been conveyed to the defendant Latta, and the deed therefor to said Latta had been placed on the public land records on the 9th day of May, 1872, before complainants began their purchases; and it is admitted by Stewart in his testimony that he was aware of the fact that the said property was held by Olmstead at the time of the purchase
1742 by complainants, and the uncontradicted testimony of Olmstead shows that he told Hillyer the fact that he so held the property. Lot 21, in the same square, was likewise held by Olmstead, and the title was in him and of record at the time of the purchase by complainants of said lot 10, and about the same time of the conveyance of said lot 10 the said lot 21 was also sold and conveyed to said complainants. Lot 21 was conveyed on the 11th of June and lot No. 10 on the 14th of June, 1872. It is therefore submitted that no charge should enter into the computation as to lot 10.

Fourth. No charge on account of lots 8 and the west half of 9 should enter into the computation, because the evidence shows that defendants made no profit out of the sale of them to the complainants. The uncontradicted evidence is that they did not receive as much as the ordinary commission.

1743 Fifth. Lot 17 comes under the rule of the court referred to in the first paragraph of this petition.

Sixth. The claim of the complainants to recover on account of the charges for care and management was barred by the statute of limitations. This was established by the testimony of N. L. Jeffries, who was called as a witness by the complainants, as well as by the testimony of the defendants, and by documentary evidence produced by said complainants and by the defendants.

Seventh. In order that we may seem not to abandon certain points made in the argument, which are still insisted upon, and for the purpose of completely preserving them in the record, we here again state them, viz:

(*a*) This court, in an equity proceeding, has no jurisdiction to hear and determine this cause, for the reason that there is a full, adequate, and complete remedy at law.

1744 (*b*) If jurisdiction is maintained in equity the said William M. Stewart was and is a necessary party to the suit.

(*c*) The entire claim set up by the complainants in their bill and amendments is barred by the statute of limitations.

(*d*) The matters in dispute were settled by the parties, the balance paid, and a receipt in full given therefore.

Your petitioners therefore pray that a reargument may be ordered in the above-entitled cause.

ENOCH TOTTEN,
SHELLABARGER & WILSON,
For Def'ts & Petitioners.

1745 *Decree in Place of that of January 9, 1885. Filed Jan. 22, 1885.*

In the Supreme Court of the District of Columbia. General Term.

SUNDERLAND & HILLYER
vs.
KILBOURN, LATTA & OLMSTEAD. } Eq. No. 7764.

This cause coming on to be heard at a former term of this court upon the pleadings, stipulation, and evidence, and having been fully argued by counsel for the several parties, and afterwards considered, it is, by the court, this 22d day of January, 1885, ordered, adjudged, and decreed that complainants have and recover of the defendants the sum of three thousand three hundred and sixteen ($3,316.00) dollars, being the amount found to be due as aforesaid on account of the purchase of lot No. seventeen (17), in square No. one hundred and fifty-eight (158), on the 31st day of May, 1872, together with interest thereon from this latter date till paid.

1746 That complainants also have and recover of the defendants the further sum of eight thousand dollars, being an account of excess in charges for care and management of complainants' property, with interest thereon from the twelfth day of December, 1876, till paid.

That, in pursuance of the stipulation filed in this cause, the said complainants have and recover of the defendant, James M. Latta, individually, the sum of two thousand five hundred dollars ($2,500) on account of excess of charges made by him for care and management of complainants' property, with interest from the first day of July, 1878, till paid.

And it is further ordered, adjudged, and decreed that the decree heretofore entered in this cause at this term on the 8th day of January, A. D. 1885, be vacated, set aside, and annulled.

1747 And it is further ordered and decreed that the complainants have and recover from the defendants their costs of this cause.

And from this decree the defendants pray an appeal to the Supreme Court of the United States, which is allowed.

CHARLES P. JAMES, *J.*

Decree Fixing Am't of Appeal Bonds. Filed Feb. 25, 1885.

In the Supreme Court of the District of Columbia. In Eq.

SUNDERLAND and HILLYER
vs.
KILBOURN *et al.* } No. 7764.

On motion of E. T. the penalty of the bond for a supersedeas on the appeal of all of the defendants to the Sup. Court is fixed at the sum of $20,000, and the penalty of the like bond on the appeal of defendant Latta from that part of the decree relating to him alone is fixed at $5,000.

1748 *Appeal Bond. Filed M'ch* 10, 1885.

In the Supreme Court of the District of Columbia, the Sixth Day of March, 1885.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN, JAMES M. LATTA, and JOHN F. OLMSTEAD. } No. 7764.

In error.

Know all men by these presents that we, Hallet Kilbourn, James M. Latta, and John F. Olmstead, as principals, and Noah L. Jeffries, Brainard H. Warner, and Stilson Hutchins, are bound unto the above-named Thomas Sunderland and Curtis J. Hillyer in the sum of twenty thousand ($20,000) dollars, to be paid to the said Thomas Sunderland and Curtis J. Hillyer, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents; but
1749 it is expressly understood that the above-named sureties shall be holden and bound to pay the following amounts respectively, and not more, to wit:

Noah L. Jeffries, seven thousand five hundred ($7,500.00) dollars; Brainard H. Warner, seven thousand and five hundred ($7,500) dollars; and Stilson Hutchins, five thousand ($5,000) dollars.

Sealed with our seals and dated this sixth day of March, 1885.

Whereas the above-named Hallet Kilbourn, James M. Latta, and John F. Olmstead have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered against them jointly and severally in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Hallet Kilbourn, James M. Latta, and John F. Olmstead

shall prosecute their said appeal to effect and answer all
1750 damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HALLET KILBOURN. [SEAL.]
JAMES M. LATTA. [SEAL.]
JOHN F. OLMSTEAD. [SEAL.]
NOAH F. JEFFRIES. [SEAL.]
BRAINARD H. WARNER. [SEAL.]
STILSON HUTCHINS. [SEAL.]

Sealed and delivered in presence of—
JOHN W. WATERS.

The above bond is approved this 9th day of March, 1885.
D. K. CARTTER, *Ch'f Justice.*

1751 *Appeal Bond of Latta. Filed M'ch* 10, 1885.

In the Supreme Court of the District of Columbia, the 9th Day of March, 1885. In Equity.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN, JAMES M. LATTA, and JOHN F. OLMSTEAD, Defendants. } No. 7764.

Know all men by these presents that we, James M. Latta, as principal, and Brainard H. Warner, as surety, are bound unto the above-named complainants, Thomas Sunderland and Curtis J. Hillyer, in the sum of five thousand dollars ($5,000.00), to be paid to the said Thomas Sunderland and Curtis J. Hillyer, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents.

Sealed with our seals and dated this 7th day of March, 1885.

Whereas the above-named James M. Latta has prosecuted an appeal to the Supreme Court of the United States to reverse
1752 the decree rendered against him personally in the above suit by the supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named James M. Latta shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAMES M. LATTA. [SEAL.]
BRAINARD H. WARNER. [SEAL.]

Sealed and delivered in presence of—
—— ——.

The above bond is approved this 9th day of March, 1885.
D. K. CARTTER, *Ch'f Justice.*

1753 *Clerk's Certificate.*

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of said court, do hereby certify that the foregoing 1,752 pages of writing, contained in four volumes, to wit, vol. 1, from page 1 to page 603, inclusive; vol. 2, from page 607 to 983, inclusive; vol. 3, from page 984 to page 1561, inclusive; vol. 4, from page 1562 to page 1752, inclusive, are truly copied from the originals on file and of record in said clerk's office in the equity cause lately pending in said court, entitled Thomas Sunderland & Curtis J. Hillyer *vs.* Hallet Kilbourn, James M. Latta, and John F. Olmstead, No. 7764, equity docket 21, and that said originals constitute the entire record in said cause.

Witness my hand and the seal of said court this 10th day of October, 1885.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk.*

1754 *Petition of Sunderland & Hillyer. Filed Dec.* 21, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and CURTIS J. HILLYER
vs.
HALLET KILBOURN, JAMES M. LATTA, and J. F. OLMSTEAD. } Equity No. 7764.

To the Honorable D. K. Cartter, chief justice of the supreme court of the District of Columbia:

Your petitioners, Thomas Sunderland and Curtis J. Hillyer, respectfully ask that an appeal to the Supreme Court of the United States be allowed to them from such part of the final decree rendered in the above-entitled action by the said supreme court of the District of Columbia, at the general term of said court held January 22, 1885, as denies or fails to award to said plaintiffs, as against all of said defendants, the sum of sixty-seven thousand four hundred and twenty-six and $\frac{92}{100}$ dollars ($67,426.92) and interest thereon, as claimed in bill, instead of thirteen thousand eight hundred and sixteen ($13,816.00) dollars, with interest, actually awarded to plaintiffs against said defendants by said decree, and specially for error in the court in failing to award to plaintiffs against defendants—

1st. On account of money illegally taken by defendants as compensation for care and management of property, sixteen thousand five hundred and twenty-six ($16,526.00) dollars and interest thereon at six per cent. per annum from December 12, 1876, in-
1755 stead of eight thousand ($8,000.00) dollars, with interest, actually awarded on said account by said decree.

2d. On account of profit fraudulently taken by defendants on purchase of square 115, the sum of twenty-five thousand ($25,000) dollars and interest thereon from May 30, 1872.

3d. On account of profit fraudulently taken by defendants on purchase of square 155, the sum of five thousand three hundred and nineteen and $\frac{55}{100}$ dollars ($5,319.55), with interest thereon from June, 1872.

4th. On account of profit fraudulently taken by defendants on purchase of lots 8, 9, and one-half of 10, in square 158, the sum of two thousand six hundred and sixty-three $\frac{70}{100}$ dollars ($2,663.70), with interest thereon from June 1, 1872.

5th. On account of profit fraudulently taken by defendants on purchase of square 156, the sum of fourteen thousand six hundred and one ($14,601) dollars, with interest thereon from May 27, 1872.

And also that plaintiffs be allowed an appeal in said action from such part of the decree therein as denies and fails to award to complainants jointly against the defendant, James M. Latta, the sum of five thousand six hundred and seventy-seven and $\frac{85}{100}$ ($5,677.85) dollars, with interest from July 1, 1878, on account of money illegally taken by said Latta as compensation for care and management of property, instead of the sum of twenty-five hundred dollars ($2,500), with interest, actually allowed by said decree, and the further sum of twelve hundred and thirty-five and $\frac{79}{100}$ ($1,235.79) dollars, with interest from July 1, 1878, money of complainants retained by defendant, James M. Latta, as shown by his account rendered.

And your petitioners further ask that a citation, in proper form, may issue to said defendants, and that the bond on appeal herewith tendered may be approved.

And your petitioners, as in duty bound, will ever pray.

Respectfully,

THOS. SUNDERLAND.
CURTIS J. HILLYER.

J. H. RALSTON,
Plaintiffs' Attorney.

Granted Dec. 21st, 1885.

D. K. CARTTER, *Chief Just.*

A true copy.

[Seal Supreme Court of the District of Columbia.]

Test:

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

1756 *Appeal Bond of Sunderland and Hillyer. Filed Dec.* 21, 1885.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia, the 16th Day of December, 1885.

THOS. SUNDERLAND, CURTIS J. HILLYER
vs.
H. KILBOURN, J. M. LATTA, J. F. OLMSTEAD. } No. 7764.

Appeal.

Know all men by these presents that we, Curtis J. Hillyer and Thomas J. Fisher, are bound to the above-named H. Kilbourn, J. M. Latta, and J. F. Olmstead in the sum of two thousand ($2,000) dollars, to be paid to the said H. Kilbourn, J. M. Latta, and J. F. Olmstead, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 16th day of December, 1885.

Whereas the above-named Thomas Sunderland and Curtis J. Hillyer have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Thomas Sunderland and Curtis J. Hillyer shall prosecute their said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be
1757 void; otherwise the same shall be and remain in full force and virtue.

CURTIS J. HILLYER. [SEAL.]
THOS. J. FISHER. [SEAL.]

Sealed and delivered in the presence of—
EDWARD J. STELLWAGEN.

Approved this 21st day of Dec., A. D. 1885.
D. K. CARTTER,
Chief Justice.

A true copy.
[Seal of Supreme Court of the District of Columbia.]
Test:
R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

1758 In the Supreme Court of the District of Columbia.

THOS. SUNDERLAND and C. J. HILLYER
vs.
HALLET KILBOURN, JAS. M. LATTA, and J. F. OLMSTEAD. } Equity No. 7764.

The United States of America to Hallet Kilbourn, James M. Latta, and John F. Olmstead, defendants in the above-entitled action, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, D. C., on the 2d Monday of October next, pursuant to an appeal allowed by me and filed in the clerk's office of the supreme court of the District of Columbia, wherein Thomas Sunderland and Curtis J. Hillyer are appellants and you are respondents and appellees, to show cause, if any there be, why the decree rendered in the above-entitled action by the supreme court of the District of Columbia, at a general term thereof held January 22, 1885, in favor of said complainants, but for only a part of the amount claimed in the bill, should not be corrected by awarding to complainants and
1759 appellants against you, the defendants and appellees, jointly, the sum of sixty-seven thousand four hundred and twenty-six and $\frac{92}{100}$ ($67,426.92) dollars and interest thereon, as claimed in the bill, instead of thirteen thousand eight hundred and sixteen ($13,816) dollars, with interest, actually awarded to plaintiffs against defendants by said decree—that is, because of error in the decree in not awarding to complainants against you, the defendants—

1st. On account of money illegally taken by defendants as compensation for care and management of property, sixteen thousand five hundred and twenty-six ($16,526) dollars and interest thereon at six per cent. per annum from December 12, 1876, instead of eight thousand ($8,000) dollars, with interest, actually awarded on said account by said decree.

2d. On account of profit fraudulently taken by defendants on purchase of square 115, the sum of twenty-five thousand ($25,000) dollars and interest thereon from May 30, 1872.

3d. On account of profit fraudulently taken by defendants on purchase of square 155, the sum of five thousand three hun-
1760 dred and nineteen and $\frac{55}{100}$ ($5,319.55) dollars, with interest thereon from June —, 1872.

4th. On account of profit fraudulently taken by defendants on purchase of lots 8, 9, and one-half of 10, in square 158, the sum of two thousand six hundred and sixty-three and $\frac{70}{100}$ dollars ($2,663.70), with interest thereon from June 1, 1872.

5th. On account of profit fraudulently taken by defendants on purchase of square 156, the sum of fourteen thousand six hundred and one ($14,601) dollars, with interest thereon from May 27, 1872.

And also you, the defendant, James M. Latta, to show cause why the said decree should not be corrected by awarding to the said complainants and appellants against you, James M. Latta, individu-

ally, the sum of five thousand six hundred and seventy-seven and $\frac{85}{100}$ ($5,677.85) dollars, with interest from July 1, 1878, on account of money illegally taken by said Latta as compensation for care and management of property, instead of the sum of twenty-five hundred ($2,500) dollars, with interest actually allowed by said decree, and the further sum of twelve hundred and thirty-five and $\frac{79}{100}$ ($1,235.79) dollars, with interest from July 1, 1878, money of
1761 complainants retained by you, defendant, James M. Latta, as shown by your accounts rendered.

And why speedy justice should not be done to the parties in this behalf.

Witness the chief justice of the supreme court of the District of Columbia this 21st day of Dec., in the year of our Lord one thousand eight hundred and eighty-five.

D. K. CARTTER, *Ch'f Just.*

1762 [Endorsed:] Supeme c't D. C. Sunderland and Hillyer *vs.* Kilbourn, Latta, and Olmstead. Equity. Citation against def'ts on appeal of Thos. Sunderland and C. J. Hillyer. Service of within citation by copy acknowledged Dec. 31, 1885. Enoch Totten for Kilbourn & Olmstead. Shellabarger & Wilson for J. M. Latta. Filed Dec. 21, 1885. R. J. Meigs, clerk. Copied Jan'y 23, 1886.

1763 *Petition of Thomas Sunderland. Filed Dec.* 21, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and CURTIS J. HILLYER *vs.* HALLET KILBOURN, JAMES M. LATTA, and J. F. OLMSTEAD. } Equity No. 7764.

To the Honorable D. K. Cartter, chief justice of the supreme court of the District of Columbia:

Your petitioner, Thomas Sunderland, respectfully asks that an appeal to the Supreme Court of the United States be allowed to him from such part of the final decree rendered in the above-entitled action by the said supreme court of the District of Columbia, at the general term of said court held January 22, 1885, as denies or fails to award to said plaintiff, as against all of said defendants, the sum of six thousand nine hundred and seventy-three $\frac{33}{100}$ dollars ($6,973.33) and interest thereon, as claimed in the bill of complaint herein, and specifically for error in the court in failing to award to this plaintiff against all of said defendants—

1st. On account of money illegally taken by defendants as compensation for care and management of property, five thousand nine hundred and seventy-three $\frac{33}{100}$ ($5,973.33) dollars and interest thereon at six per cent. per annum from December 12, 1876; and

2nd. On account of money fraudulently taken by all of said
1764 defendants from this plaintiff as commission on sale of house of Wm. M. Stewart, the sum of one thousand dollars ($1,000), with interest thereon at the rate of six per — annum from October 10, 1875.

And also that this plaintiff be allowed an appeal in said action from such part of the decree therein as denies and fails to award to this plaintiff against the defendant, James M. Latta, the sum of one thousand six hundred and seventy-two and $\frac{85}{100}$ ($1,672 85) dollars, with interest thereon at the rate of six per cent. per annum from July 1, 1878, on account of moneys illegally taken by said Latta as compensation for care and management of property.

And your petitioner further asks that a citation, in proper form, may issue to said defendants and that the bond on appeal herewith tendered may be approved.

And your petitioner, as in duty bound, will ever pray.

Respectfully, THOS. SUNDERLAND.

Granted Dec. 21st, 1885.

D. K. CARTTER,
Chief Justice.

A true copy.

[Seal Supreme Court of the District of Columbia.]

Test: R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

1765 *Appeal Bond of Thos. Sunderland. Filed Dec.* 21, 1885. *R. J Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 16th Day of December, 1885.

THOMAS SUNDERLAND, CURTIS J. HILLYER
vs.
H. KILBOURN, J. M. LATTA, J. F. OLMSTEAD. } No. 7764.

Appeal.

Know all men by these presents that we, Curtis J. Hillyer and Thomas J. Fisher, are bound unto the above-named H. Kilbourn, J. M. Latta, J. F. Olmstead in the sum of two thousand ($2,000) dollars, to be paid to the said H. Kilbourn, J. M. Latta, and J. F. Olmstead, their executors and administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 16th day of December, 1885.

Whereas the above-named Thomas Sunderland has prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Thomas Sunderland shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same
1766 shall be and remain in full force and virtue.

CURTIS J. HILLYER. [SEAL.]
THOS. J. FISHER. [SEAL.]

Sealed and delivered in the presence of—
EDWARD J. STELLWAGEN.

Approved this 21st day of Dec., A. D. 1885.

D. K. CARTTER,
Chief Justice.

A true copy.

[Seal Supreme Court of the District of Columbia.]

Test: R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

1767 Filed Dec. 21, 1885. R. J. Meigs, clerk.

In the Supreme Court of the District of Columbia.

THOMAS SUNDERLAND and C. J. HILLYER
vs.
HALLET KILBOURN, JAMES M. LATTA, and J. F. OLMSTEAD. } Equity No. 7764.

The United States of America to Hallet Kilbourn, James M. Latta, and John F. Olmstead, defendants in the above-entitled action, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, D. C., on the 2d Monday of October next, pursuant to an appeal allowed by me and filed in the clerk's office of the supreme court of the District of Columbia, wherein Thomas Sunderland is appellant and you are respondents and appellees, to show cause, if any there be, why the decree rendered in the above-entitled action by the supreme court of the District of Columbia, at a general term thereof held January 22, 1885, should not be corrected by awarding to complainant and appellant, Thomas Sunderland, against you, the defendants and appellees, jointly, the sum of six thousand nine hundred
1768 and seventy-three and $\frac{33}{100}$ ($6,973.33) dollars and interest thereon, as claimed in the bill of complaint herein, and specifically for error in the court in failing to award to said Thomas Sunderland against you, the defendants—

1st. On account of money illegally taken by you, the defendants, as compensation for care and management of property, five thousand nine hundred and seventy-three and $\frac{33}{100}$ ($5,973.33) dollars and interest thereon at six per cent. per annum from December 12, 1876; and,

2d. On account of money fraudulently taken by all of you, the said defendants, from said Thomas Sunderland, as commission on sale of house of William M. Stewart, the sum of one thousand ($1,000) dollars, with interest thereon at the rate of six per cent. per annum from October 10, 1875.

And also you, the defendant, James M. Latta, to show cause why the said decree should not be corrected by awarding to the said complainant and appellant, Thomas Sunderland, against you, James M. Latta, individually, the sum of one thousand six hundred and seventy-two and $\frac{85}{100}$ ($1,672.85) dollars, with interest thereon at the rate of six per cent. per annum from July 1, 1878, on account of moneys illegally taken by you, the said Jas. M. Latta, as compensation for care and management of property.

1769 And why speedy justice should not be done to the parties in this behalf.

Witness the chief justice of the supreme court of the District of Columbia this 21st day of Dec., in the year of our Lord one thousand eight hundred and eighty-five.

D. K. CARTTER, *Ch'f Just.*

1770 [Endorsed:] No. 7764. Supreme c't D. C. Sunderland & Hillyer *vs.* Kilbourn, Latta & Olmstead. Equity. Citation against def'ts on appeal of Thos. Sunderland. Service of within citation by copy acknowledged Dec. 31, 1885. Enoch Totten, for Kilbourn & Olmstead. Shellabarger & Wilson, for J. M. Latta. Filed Dec. 21, 1885. Copied Jan'y 23, 1886. R. J. Meigs, clerk.

Endorsed on cover: District of Columbia supreme court. No. 188. Hallet Kilbourn, James M. Latta, and John F. Olmstead, appellants, *vs.* Thomas Sunderland & Curtis J. Hillyer. Filed October 27, 1885. No. 261. Thomas Sunderland & Curtis J. Hillyer, appellants, *vs.* Hallet Kilbourn, James M. Latta, and John F. Olmstead. And No. 262. Thomas Sunderland, appellant, *vs.* Hallet Kilbourn, James M. Latta, and John F. Olmstead. Filed April 28, 1886.

ADDITION TO RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. 188.

HALLET KILBOURN, JAMES M. LATTA, AND JOHN F. OLMSTEAD, APPELLANTS,

vs.

THOMAS SUNDERLAND AND CURTIS J. HILLYER.

FILED OCTOBER 27, 1885.

No. 261.

THOMAS SUNDERLAND AND CURTIS J. HILLYER, APPELLANTS,

vs.

HALLET KILBOURN, JAMES M. LATTA AND JOHN F. OLMSTEAD.

No. 262.

THOMAS SUNDERLAND, APPELLANT,

vs.

HALLET KILBOURN, JAMES M. LATTA, AND JOHN F. OLMSTEAD.

FILED APRIL 28, 1886.

APPEALS FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

SUPREME COURT OF THE UNITED STATES.

THOMAS SUNDERLAND and C. J. HILLYER

vs.

HALLET KILBOURN *et als.*

Opinions of the Court in General Term (3 *Mackey*, 510).

Mr. Justice WYLIE delivered the opinion of the court:

This is a controversy which grew out of the employment of the firm of Kilbourn & Latta by Messrs. Sunderland and Hillyer and William M. Stewart, in the year 1872, for the purpose of buying property in the northwestern section of the city on speculation. The operations of Kilbourn & Latta under this agreement were pretty extensive. The principals, Sunderland, Hillyer, and Stewart, were here in Washington in the months of May and June—perhaps later—in 1872. Within a period of five or six weeks these gentlemen, through their agents, Kilbourn & Latta, purchased property in that section of the city amounting to about $600,000. Mr. Sunderland's interest in these purchases was one-half. Mr. Hillyer was to have one-quarter and Mr. Stewart was to have one-quarter interest. Soon afterwards, and in the same year, Mr. Stewart sold out his interests to Mr. Sunderland, so that a much larger interest in all these purchases was then vested in Sunderland. Besides that Sunderland made some purchases for himself in the same way, amounting to about $150,000.

The bill in this case charges, first, that the agents were guilty of fraud in purchasing or securing bargains at one price and reporting to their principals at another price and taking the difference. Secondly, they claim that the defendants, their agents, charged their principals with a large amount of commissions for the care and management of the property purchased, which commissions they aver were not earned.

Although the period covered by these transactions was a brief one, yet large purchases were made. The number was, I think, about 31 or 32 in all. The only subject about which there has been any controversy between the parties is in regard to four of these purchases—two squares and some lots. As to all the others there has been no controversy at all, except as to the charge for commissions and management.

Now, as to these four purchases, the bill charges that these agents purchased square 115 for $40,000 and charged the principals $65,000, making a profit of $25,000. They also charge that on square 155 there was a profit, made in the same way, of $5,319.55. On lot 17, in square 158, they charge that a profit was made in the same way of $3,316; and on three other lots or parts of lots in the same square

a similar profit was made of $2,663.70, and on square 156 a profit of $14,601. These sums amount in all to about $50,000.

It is important to inquire what kind of a contract this was. The bill sets out that there was a special agreement and specifies the terms of the agreement. The defendants in their answer deny that there was any special agreement, and assert only general employment; but this feature of the case can be illustrated best by reading the evidence of Mr. Stewart in regard to the nature of the employment and the character of the agreement, and the bill seems to intimate that the agreement was as has been proved by Mr. Stewart. Mr. Stewart was one of the original parties, and he says: "On consultation among ourselves, Messrs. Sunderland and Hillyer and I, we came to the conclusion that Kilbourn & Latta should be employed to negotiate the purchase we contemplated, and accordingly we consulted with and employed them in the business. It was distinctly understood that they should negotiate for such pieces of property as we desired to purchase from time to time, and buy the same at the lowest possible price, and that they were to have a commission on all purchases made by them, but that in case the vendor should apply to them to sell, that they should obtain a reduction from the purchase price of the commission which the vendor in such case would be liable to pay, and in that case it would be the same to us as if we paid no commission."

And on cross-examination he says: "The exact terms of the agreement were, as near as I can recollect, that the firm of Kilbourn & Latta were to undertake to purchase such pieces of property as we might desire to purchase, and charge a commission therefor in each case; but in a case where the vendors sought them (that is, Kilbourn & Latta), and in which case they were entitled to charge a commission as against the vendors, that the same should be deducted from the purchase price."

We think that such a contract as that was utterly void—wholly illegal. If Kilbourn & Latta under that contract had performed their duty faithfully to their employers (in this instance Sunderland, Hillyer, and Stewart) it involved their betrayal of the other side. Sunderland, Hillyer & Co. were to select the pieces of property, and then Kilbourn & Latta were to sell or procure authority to sell the same property to them at the lowest possible price; whereas it was their duty, if they were employed to sell, to get the highest possible price.

So that the arrangement between these parties was to do an illegal thing. Of course no contract of that kind can be sustained in a court of equity. The principle on which the rule here laid down depends is, as stated by Chief Justice Wilmot, the public good. I read for convenience from Broom's Legal Maxims, page 738:

"The objection," says Lord Mansfield, "that a contract is immoral or illegal as between plaintiff and defendant sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is ever allowed, but it is founded in general principles of policy, which the defendant has the advantage of, contrary to the real justice as between him and the plaintiff—by acci-

dent, if I may so say. The principle of public policy is this: *Ex dolo malo non oritur actio.* No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act. If, from the plaintiff's own statement or otherwise, the cause of action appear to arise *ex turpi causa* or the transgression of a positive law of this country, there the court says he has no right to be assisted. It is upon that ground that the court goes, not for the sake of the defendant, but because they will not lend their aid to such a plaintiff. So, if the plaintiff and the defendant were to change sides, and the defendant were to bring his action against the plaintiff, the latter would then have the advantage of it, for, where both are equal in fault, *potior est conditio defendentis.*"

The court will never support a contract by which one party agrees to betray his duty to his employers, and thus we regard this contract as proved by Mr. Stewart. The same thing is proved by Mr. Hillyer and Mr. Sunderland, but is not stated with quite so much distinctness. The contract is set out rather more definitely in the bill, as of the same character—that is, where commissions could be obtained from the other side—the selling side—there the purchasing side was not to pay.

We regard, then, this contract as set out in the bill and more distinctly proved by the evidence, as immoral, contrary to public policy, calculated to create a breach of faith between these defendants and the sellers of the property, calculated to make it their interest to seek authority in the owners of the property to sell their property at the lowest possible price, when the law imposes the duty of obtaining for their employers the highest possible price.

A man cannot be both buyer and seller. He cannot be agent for the purchaser and agent for the seller at the same time. The duties are incompatible, and a contract for such employment is utterly void.

As we said before, there were thirty-odd purchases made. How many of those purchases were made from sellers and for the lowest price we do not know; it is not in proof here, and it is not our duty to investigate that subject. But as to these four particular pieces of property we are of opinion that they do not fall within this unlawful contract.

Now, this contract, as we have described it, was a general contract in substance, but, according to the contract, each purchase was to be a distinct purchase. These gentlemen were to designate to Kilbourn & Latta what property they wanted to buy, and then Kilbourn & Latta were to go and make the purchase. Each purchase, therefore, should occur by itself. Purchases were made at different times; the property was different; the parties were different. One purchase, therefore, might be good, whilst others might not be good—that is, under this contract.

There undoubtedly was a general employment of Kilbourn & Latta for their agency in this business under a contract which was objectionable in the feature we have pointed out. But if there were purchases made, and fairly made, which did not fall within the immoral terms of this contract, we think that such purchases may be

sustained, and the claim for compensation might be allowed. For example, if Kilbourn & Latta were not employed to sell in any instance by the owner of the property, or if they were the owners of a piece of property themselves and sold to the other party with their eyes open, that would be a purchase and sale which does not fall within the objectionable terms of the contract. Wherever there is a transaction of that kind—a fair and honest transaction—the court will sustain it. Reading further upon that subject from Broom's Legal Maxims, page 741, it is said:

"It must be observed, however, that a contract, although illegal and void as to part, will not necessarily be void *in toto*. Thus, if there be a bond with condition to do several things, some of which are agreeable to law and some against the common law, the bond shall be good as to the former and void as to the latter only; and this rule is generally true with respect to a contract void and illegal in part as against public policy, and yet good as to the residue."

Now, although we have deemed it our duty to express our reprobation of this character of contracts, yet we think that some of the subjects of controversy in this case do not fall within the objectionable provision of this contract.

As to square 115—the first square on which a profit of $25,000 was made—the facts, in brief, were these: Kilbourn & Latta had been in negotiation for the purchase of this square for about two years themselves, and had obtained (in the winter, I think it was in January or February, 1872) the refusal from the owners at $40,000. It was a square of ground which belonged to the trustees of a public institution. The trustees passed a resolution on their minutes recognizing the offer and accepting it at $40,000. Kilbourn & Latta had not closed their contract when they entered into the arrangement with Sunderland, Hillyer, and Stewart, but soon after, or it may be said simultaneously with making this arrangement with these gentlemen, they completed the purchase and they took the money which Sunderland and Hillyer had deposited with them and completed the purchase at $40,000, and then turned it over or submitted it to Sunderland, Hillyer, and Stewart to say whether they would take it at $65,000 or not, without informing them what it had cost them or who were its owners. Sunderland, Hillyer, and Stewart decided to take it at $65,000. They judged for themselves. They had selected it beforehand and they agreed to take it.

The claim of this bill is that under this agreement Kilbourn & Latta ought to have turned that property over to these purchasers at $40,000. We do not think so. They judged for themselves whether it was worth $65,000. It was the property substantially of Kilbourn & Latta. They had had the refusal of it and an interest in it to that extent long before they had seen Sunderland and Hillyer, and, in fact, had been in negotiation for it for several years, and they were entitled themselves to the benefit of their bargain. They were not obliged by this contract to give these gentlemen the benefit of a bargain which they had previously made for this property. That would have been a very disadvantageous contract to them. They would lose $25,000 by such a bargain as that, and all they

would make would be commissions on selling $40,000 worth of property. The law does not require any such extravagance of purity. It is very true that Kilbourn & Latta concealed the fact that they had this bargain, and that they were really the owners of the property. They ought in good faith to have told the whole truth.

But what would be the consequence of that? Why Sunderland, and Hillyer, if they had any fault to find with the property, if they had been imposed upon by the concealment, might have repudiated the purchase. They would have said, "Why, here, we have been imposed upon. You concealed an important fact. You were our agents, and you ought to have told us you were selling this property." But they did not take that course. The property was a valuable purchase and they kept it.

By what principle of law do they claim, then, that they, who employed Kilbourn & Latta in the month of May, 1872, shall have the benefit of a contract which Kilbourn & Latta had secured for themselves months before? This contract does not give them any such right. The only objection to it in the world is the one which we have mentioned, and that is that in making this sale to Sunderland and Hillyer they did not inform them that they were selling for themselves. If they were imposed upon in that way they could easily have repudiated the purchase.

Well, how is a court to make an allowance in a case of that kind and keep the contract, where they keep the property and make a profit out of the property because they refuse to give it up? Why should they be allowed, then, to inflict a loss of $25,000 upon their agents? We do not think that the principles of equity have reached quite so sublime a degree of purity as that, and we therefore conclude that the complainants are not entitled to this $25,000. We think it is fairly the property of Kilbourn & Latta.

Then there is a claim for profit on square 156 of $14,601, with interest. That was a purchase made by the firm of Kilbourn & Latta from Mr. Kilbourn, trustee of the Real Estate Association. There was a real estate association here in Washington for the purchase of property which had been established several years. A number of gentlemen had invested their money, and the head managers of the syndicate were Messrs. Kilbourn & Latta, and Mr. Kilbourn, a member of that firm, was the trustee in whose name these purchases were vested for the use of the members of the syndicate. This firm had purchased this square some time before, and the title was vested in Kilbourn as trustee for the syndicate, and this square was sold by Mr. Kilbourn to these gentlemen, Sunderland and Hillyer, and Sunderland and Hillyer claim that they ought to have had that square at the same price that the syndicate had bought it for several years before. In the course of the evidence, they give as their reason (which we think does not belong to this case at all) the conduct of Mr. Kilbourn and of Mr. Latta toward these gentlemen who were in that syndicate, for the purpose of showing that Kilbourn & Latta had defrauded those who had employed them. We think that that investigation does not belong to this case, but that

the same principle which applied to square 115 applies also to this square 156; that the legal title was in Kilbourn for the benefit of this syndicate, who had put money into the hands of Kilbourn & Latta for the purchase of this property, and that if Mr. Kilbourn, or Kilbourn & Latta, defrauded the syndicate, those frauds are not to be applied to the benefit of the plaintiffs in this suit. So that we think this $14,601 does not belong to these plaintiffs. That makes about $40,000 of this claim disposed of.

Another claim is profit on square 155, amounting to $5,319.55. Without going much into detail with regard to that, I will say that after that square had been selected by these gentlemen as a desirable piece of land to purchase, and Kilbourn and Latta were authorized to purchase it, they bought it for themselves—substantially for themselves—and this was the profit they made upon it in turning it over to these complainants. We think that that property ought to be accounted for. Good faith must be preserved by all agents, and these defendants had no right to buy or sell for anybody; they were merely employed as agents to negotiate. But when their employers pointed out the property which they desired to buy, good faith required that they should exert their best abilities for the purpose of purchasing it for them on the best terms they could. They had no right to go and buy it for themselves and make a profit from their employers out of it. This claim we think, therefore, is to be allowed.

Then there is the profit on lot 17 and on two or three other lots in square 158—lot 17, one-half of 9, 10, and one other lot; we think that those profits ought to be accounted for also. In regard to lot 17 there was this feature: The plaintiffs pointed out square 158 and said, "We are willing to give 50 cents a foot for any property you can get in that square." Kilbourn and Latta then set to work and they bought some lots in that square at forty cents and charged the complainants fifty cents. That they had no right to do. The profit of the purchase belonged to the employers. They were acting in the purchase for them, and whatever profit was made belonged to them. An agent is not to be encouraged in devices to make profits secretly out of the business in which he is engaged as against his employer. The profits of his employment belong to his employer. Good faith and public policy require a strict enforcement of this rule. These allowances should be made with interest.

We come, now, to a difficult feature of the case produced by a stipulation which has been filed in the cause. It is dated the 22d of March, 1882, and, in substance, it is an agreement by all the parties that the court is to render such decree for or against any or either of them as the evidence warrants. The firm of Kilbourn & Latta had been dissolved at the close of the year 1876, and Mr. Latta had gone to the West, and the complainants in this case brought suit in equity against him out there in regard to these transactions. After the dissolution of the firm he had taken the care and management of this property and the others had not. He had received certain sums and the others had received certain other sums from the profits of this agency and from the money with which they had

been entrusted. He had rendered a certain class of services with regard to this property after that in which they had not participated, and in addition to the other questions in the case there is the question of the apportionment of his liability to these complainants arising out of the dissolution of the partnership.

To the suit which was brought there he filed his answer. All parties, the complainants and the defendants, were anxious to have but one litigation, and the result was that the Western suit was brought here and a copy of the answer and the other proceeding in that case were filed with these, and this stipulation was entered into: that the court was to render such decree for or against any or either of the parties as the evidence warrants.

We hesitated a little about acting under such a stipulation. Evidence without allegation is of no consequence either in a court of equity or a court of law, and this bill was not framed with a view to this other litigation going on in the West; indeed, the Western litigation sprang up after this bill was filed, but the stipulation covers everything, and it is our purpose to try to carry out the objects of the parties.

This business began, as we have said, in June, 1872. The management of the business remained in the hands of Kilbourn & Latta up to and until the close of 1876. It was then transferred to Mr. Latta, who went out of the firm to a great extent, and these gentlemen are severally claiming compensation for their services in the management of the property. It will be remembered that these were purchases for speculation; not for private use. Kilbourn & Latta were the agents to carry on the speculation, and the title to the purchases was taken in the name of Mr. Latta, one of the members of the firm, in order to the more convenient management of the business. In these purchases one-quarter to one-third was paid in cash, and the notes of Mr. Latta were given for the deferred payments, or the encumbrances were assumed by him.

Soon after these purchases, which were made in 1872, came the business panic of 1873, which overspread the whole country, reducing the value of property everywhere. This property accordingly sank in value, and the correspondence in evidence shows that Mr. Sunderland, who was most largely interested in the property, and Mr. Hillyer, too, were almost ready to give up and lose their cash investments and let the property go rather than meet the deferred payments. At any rate, that was their intimation, and there is some evidence on that subject. Certain it is that the speculation at that time seemed to have turned in the wrong direction; it was a losing operation. But Kilbourn & Latta kept the property. They watched it; they paid the taxes upon it; they took care of these deferred payments (to be sure, the complainants furnished the money) until towards the end, when it became necessary to raise a loan, I think, of $35,000 and furnish security to pay that loan. We think, for the persistence, pluck, determination, and confidence shown by these agents during those disastrous years they ought to be well compensated. If this property had been in the hands of its owners they undoubtedly, from the evidence we have, would have let it go

and have lost their cash payments. But Kilbourn & Latta were always sanguine of the result ultimately, and they encouraged these men to hold on, and took care of the property, watched the assessments, and took care of the deferred payments. Hillyer and Sunderland, the principal men, were absent in Europe a great part of the time. Stewart had sold out and had no longer any interest. We think they ought to be paid.

Now, the contract upon which this suit was brought contemplated that they should be paid out of the sales of the property that were made—that is, the contract contemplated that Kilbourn & Latta should keep the management of the property until sales could be made. But in July, 1878, Hillyer and Sunderland came here. There never had been a settlement between these gentlemen. Here was $600,000 or more of property and large sums of money deposited in the hands of agents, and large sums paid out, and there were a thousand items and no settlement; but in 1878 they demanded an account, and Kilbourn & Latta furnished them an account, and in that account they charged $16,526.67 for the care and management of the property for about four years and after, as they claim. That was whilst it remained in the care of the old firm of Kilbourn & Latta, before Mr. Latta went out. Besides that, Mr. Latta, after he went out, made a claim for care and management amounting to $5,677.85, and besides that used a sum of money belonging to the complainants amounting to $1,235.79. We think that, though these services were valuable, this claim is too large, and to show that it is too large we refer to the account kept by Kilbourn & Latta with Sunderland. Under date of December 12, 1876, is the item: "Care and management of whole property from May, 1872, to date"—that was during the whole period of it, and it is care and management, not only of Sunderland's interest, but of the whole property—"$5,973.33." That was the value which they put upon their services in their settlement with Mr. Sunderland, and it is very strong evidence against them. To be sure, it is not an admission by which they are absolutely bound, and we do not propose to hold them to that; but we think, in the face of their own admission on that account, that an allowance of one-half of this $16,526.67 would be ample compensation to the old firm of Kilbourn & Latta, and we make them that allowance of $8,263.33½.

In regard to Mr. Latta's charge of $5,677.85 for his management of, we divide that in the same way. We allow him one-half, and we charge him also with the $1,235.79, which he undoubtedly used.

[His honor then went on to consider several other items of charge, but as the disposition of them involved only the consideration of questions of fact, that portion of the opinion is omitted. Concluding, he says:]

I am authorized to say for the chief justice that if he were present he would not concur in the conclusions we have reached. In his opinion, this court has no jurisdiction. He thought that it was a case that belonged to a court of law. My brother James and myself think that it is a clear case for a court of equity; that it is a case of fraud, a case of trust, a case of account. There is an act of

Congress (sec. 723, R. S.) which declares that courts of the United States sitting in equity shall not exercise jurisdiction where there is a remedy at law. The Supreme Court of the United States has put a construction upon that act, and it says that it adds nothing at all to the doctrine which existed before the passage of the act—that the statute merely emphasizes the principle. But, however emphatically that doctrine may have been declared in the act of Congress, we think that this is so clear a case for the jurisdiction of a court of chancery that we have not hesitated a moment in regard to the subject.

Mr. Justice JAMES said:

I will add one or two concurrent expressions in regard to some of the features of this case. First, it alleged that the whole of these transactions were provided for in the preliminary general agreement; that the plaintiffs were to employ the defendants on a large scale and were to have their services, no matter what the transactions should be—that is to say, that if they were already employed by other people to make sales, yet if they desired to purchase that same land the defendants should be under some kind of obligation to them as their agents. My brother Wylie has with emphasis characterized the immoral effect of that kind of arrangement, and in that I entirely concur. So far as it constituted an engagement that the defendants should be under obligations to them in their purchases from the defendants' employers it is not permissible; but it has occurred to me to say that I have had, in the first place, some doubt of the establishment of that contract. It was denied by the defendants and there was a certain degree of improbability—perhaps a good deal of improbability—that men who were engaged in the business of real estate brokerage would commit themselves to so unprofitable an obligation; but, besides that, I have the impression that that contract was not binding. I do not see any mutuality in it. It was said that these gentlemen were to be compensated ultimately by their commissions in selling property on speculation. First, they were to have commissions directly from the plaintiffs where they were not already employed by other people, in which case their compensation would be from the latter. But as to this general agreement it ought to have been shown that there was a preliminary obligation assumed before a single purchase was made if that contract is to enforced and applied. But here the plaintiffs were not bound after making a single transaction to go on; they were not bound to continue. It was not a contract in which on one side they bound themselves to make purchases to a certain extent, or to some indefinitely large extent, in consideration of which obligation the others were to serve them in this way. They were not bound to buy a dollar's worth, for that matter; they could stop at any time. There were 31 or 32 transactions, and they could have stopped at any of them, and this appears on the face of the contract; so that there seems to have been no obligation assumed on the part of these complainants to do anything. If that is so there were no mutual obligations. So that the alleged obligation said to have been assumed before the purchases commenced on the part of Kilbourn &

Latta was not made binding by a consideration of obligation on the other side.

If there were no such preliminary agreement—namely, that in every transaction the defendants were to be the agents of the complainants—then what would be the character of the transaction in square 115? It would be simply this, and you will find in it nothing that will support the complainant's claim that the complainants undertook to buy this square 115. But that would not preclude the defendants from selling their own property. If, however, it involved an obligation, as I think it did, on the part of the defendants to disclose that they were acting as principals, it would still be necessary to ascertain what the injury was. The complainants would have to establish some damage that they had suffered. Without the help of this general preliminary contract they could not insist, it seems to me, that on discovering that the defendants had bargained for that property, that bargain must be understood to have been made for them. If they had no preliminary agreement which was binding, it was reducible to this: that after these defendants had made the bargain for square 115 the complainant undertook to purchase through them. They were not informed, though, that those whom they undoubtedly regarded as their agents were themselves the principals. It is difficult to see where the damage lay in that case. They took it at their own price—the price which was reported to them. It is not demonstrated that they paid any more than they would have paid if they had known who was the owner. But after that occurred, if they had a right to complain, then it seems to me clear, as has already been stated in the opinion of the court, their remedy lay simply in throwing up the bargain. There is a principle in the law that a party cannot hold on to a contract or insist upon its being carried out, as they did, by retaining the fruits of it, and have damages for the breach of it—in other words, treat it as a contract fulfilled and as a contract broken.

With regard to these other cases, in which they were told that the plaintiffs would give 50 cents a foot for whatever lots could be obtained in square 158, I think it ought to be very distinctly understood that this court will not sustain any such construction as has been put upon that matter by the defendants. In the argument it was said to us that substantially the plaintiffs said to Kilbourn & Latta, "We will give you 50 cents for anything you can get." They did no such thing. There is not such a word in the evidence. They did not say, "We will give you 50 cents for anything you can get." There was a colloquy at the bar upon this subject, basing it all on that phrase. They simply said, "We will give 50 cents for whatever you get;" and they did not mean that they would give 50 cents absolutely, but that that was their limit, and one of the defendants said that they regarded this as an open order, in which case the broker takes care of himself. Well, he cannot do it in this court. We do not allow him to take care of himself. He knows perfectly well that he is employed by the purchaser when he is not already acting for the seller. The price, the limit named, is 50 cents, and when he makes the negotiation he is obliged to regard

himself as making that negotiation for his principal, the purchaser. In that case he had already one principal, namely, the purchaser, and he could not act for another. I do not care what the view taken by brokers is; it is time they should find out the view of courts of equity and the view of the law, that when so employed they are to act simply for the principal, and it is not for them to take care of themselves. There is the most emphatic reason for holding them liable in that part of the matter.

SUPREME COURT OF THE UNITED STATES.

KILBOURN *et al.* *vs.* SUNDERLAND *et al.* — 188.

&

TWO OTHER CASES. — 261 & 262.

Cross-appeal.

Portion of the Record Omitted from Transcript.

(Copy.)

Before the Supreme Court of the District of Columbia.

Filed Mar. 14, 1882. R. J. Meigs, clerk.

SUNDERLAND and HILLYER *vs.* KILBOURN and OLMSTEAD. — In Equity. No. 7764.

Amendment to Bill.

Paragraph 11½. Plaintiffs further aver that in the month of May, 1872, the plaintiffs and said Stewart had under consideration the desirability of purchasing the whole of square 156, in said city, and requested the said firm, as their agents under their employment, as hereinbefore stated, to make inquiries respecting the said square, negotiate for the purchase thereof, and ascertain the lowest price at which it could be purchased on their account; that subsequently and shortly before the 27th day of May, 1872, the said firm informed the plaintiffs and said Stewart that said firm had been in negotiation with the owner or owners of said square, and had on their part diligently conducted the same in the interest of the complainants and said Stewart with a view to procure the same for them at the lowest possible price, and had ascertained that the same could be purchased for the sum of $90,429.90, and that this was the lowest price for which the said square could be purchased from the owner or owners thereof, and the said firm at the same time advised the

plaintiffs and the said Stewart to purchase the square at the said price; and the plaintiffs and said Stewart, not having been informed by the said firm and not knowing who in fact was the owner or were the owners of the same and without any inquiry in reference thereto, but relying upon the truth of the representations so made by the said firm and upon their advice, authorized the said firm to purchase the said square, on account of complainants and said Stewart, at the price last above named, and that on the 27th day of May, 1872, the said firm informed the plaintiffs and said Stewart that the purchase had been concluded, and that a deed in due form had been executed for the said square by the owner or owners thereof to James M. Latta, as trustee for the plaintiffs and the said Stewart, and the said firm thereupon charged the said plaintiffs and the said Stewart with the amount last above stated as the purchase price thereof, and from funds in the hands of said firm belonging to the plaintiffs and said Stewart withdrew, under color of said purchase, the sum of $20,000, and represented to the plaintiffs and said Stewart that the said sum was required by the vendor of the property as a cash payment upon the purchase, leaving the property encumbered in the sum of $70,429.90, which encumbrance was afterward fully paid and discharged by the said plaintiffs.

But the plaintiffs aver, as they are now informed and believe, that the representations so made by the said firm in respect to the price of the said square were false and fraudulent; that at the time of said pretended negotiations and of said purchase the title to the said square stood in the name of Hallet Kilbourn, trustee, and was held in trust by him for a certain company composed of several individuals and called the "Real Estate Association," in which neither the said Kilbourn, trustee, nor the firm of Kilbourn & Latta nor any member thereof had any actual or beneficial interest; that the said firm did not in fact negotiate with the said "Real Estate Association" nor with any of the individuals composing the same with reference to the sale of the said square to the said plaintiffs and said Stewart, nor, as plaintiffs are informed and believe, did the said firm communicate to the said "Real Estate Association" nor to any member thereof the fact that negotiations for the purchase of the same were pending nor until some time after the conclusion of the sale the fact that the sale and conveyance to plaintiffs and said Stewart had been made, nor did they ever communicate to said association or to any member thereof the actual price which had been paid for the same by the plaintiffs and said Stewart; but, on the contrary, induced the members of the said association to believe that the said square had been sold and conveyed by said Hallet Kilbourn, trustee, for the sum of $65,748, and that neither the said firm nor the said Kilbourn, as trustee, ever in fact accounted to the "Real Estate Association" or to any members thereof for any other sum as the sale price of said property than that of $65,748 last above named, and that neither the said association nor any members thereof ever demanded, claimed, or received any other than the said sum on account of the said sale, and that the differ-

ence between said sum and the amount paid as above stated by the complainants and said Stewart, to wit, $24,681.90, unbeknown to the complainants and said Stewart, was appropriated and retained by the said firm of Kilbourn & Latta for its own benefit, and complainants aver that by reason of the premises the defendants became and are chargeable in equity, as trustees for the complainants, with the excess of the purchase price actually paid to the said firm by the complainants and said Stewart over the amount obtained by the said "Real Estate Association" on the sale thereof, to wit, $65,748.

Complainants further aver that until the month of January, 1882, they nor either of them had any knowledge that the sum of $90,429.90 above named was not the actual price for which the said square had been sold to the complainants and the said Stewart, in 1872, by the then owners thereof, through the said firm of Kilbourn & Latta, nor did they or either of them know any of the facts constituting the fraud in the said purchase as above set forth; that the said facts were, up to the said date, carefully concealed from the said complainants and the said Stewart and from each of them by the members of the firm of Kilbourn & Latta in such manner that the complainants had no knowledge of them and could not with any reasonable degree of diligence have ascertained them; that the said facts were ascertained first in the months of January and February, 1882, by an inspection of the books of the said firm of Kilbourn & Latta, obtained through an order of court, and by the statements of J. F. Olmstead, one of the members of said firm, when under examination as a witness in reference to the same.

THOS. SUNDERLAND.
C. J. HILLYER.

UNITED STATES OF AMERICA, }
District of Columbia, } *ss:*

Curtis J. Hillyer and Thomas Sunderland on their oaths depose and swear that they have read the foregoing amendment to original bill by them subscribed and know the contents thereof, and that the facts therein stated upon their personal knowledge are true, and that the facts therein stated on information and belief they believe to be true.

THOS. SUNDERLAND.
C. J. HILLYER.

Subscribed and sworn to before me by the said Curtis J. Hillyer and Thomas Sunderland this 7th day of March, 1882.

[NOTARIAL SEAL.] EDWARD J. STELLWAGEN,
Notary Public.

It is hereby stipulated that the foregoing is a true copy of the amendment referred to in and filed in pursuance of the order of the court, passed on the 14th day of March, 1882, in this cause, and that

Office Supreme Court U. S.
FILED.
MAR 7 1889
JAMES. H. McKENNEY.
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1888.

HALLET KILBOURN *et al.*, *Appellants*,
vs.
THOMAS SUNDERLAND *et al.* } No. 188.

THOMAS SUNDERLAND *et al.*, *Appellants*,
vs.
HALLET KILBOURN *et al.* } No. 261.

and

THOMAS SUNDERLAND *et al.*, *Appellants*,
vs.
HALLET KILBOURN *et al.* } No. 262.

Brief for Kilbourn, Latta and Olmstead, Appellants, in 188 and Appellees in 261 and 262.

ENOCH TOTTEN,
SHELLABARGER & WILSON,
For Kilbourn, Olmstead & Latta.

R. O. Polkinhorn, Printer.

Supreme Court of the United States.

OCTOBER TERM, 1888.

HALLET KILBOURN *et al.*, *Appellants*,
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THOMAS SUNDERLAND *et al.*, *Appellants*,
vs.
HALLET KILBOURN *et al.* } No. 261.

and

THOMAS SUNDERLAND *et al.*, *Appellants*,
vs.
HALLET KILBOURN *et al.* } No. 262.

Brief for Kilbourn, Latta and Olmstead, Appellants, in 188 and Appellees in 261 and 262.

Cross Appeals from a decree of the Supreme Court of the District of Columbia.

These appeals grew out of a money decree, rendered in what is really *an action for money had and received* instituted in an equity court.

The original bill was filed in the court below on the 9th day of June, 1881. (1.) An amendment was made to the bill (30) on the 14th day of March, 1882, which, by accident, was omitted from the trans-

cript, but is now printed, by consent, as an additional record; with it is printed the opinions delivered in the court below. Previous to the filing of the original bill in the court below, the complainants had instituted two like suits in equity in the Circuit Court of the United States, for Indiana, one of which was their joint suit, and the other was in behalf of Sunderland alone. Process was served on Latta in the Indiana causes, but no jurisdiction was ever obtained there of the defendants Kilbourn or Olmstead. After a vast deal of testimony had been taken in the cases, a stipulation was entered into March 22, 1882, (35) whereby the subject matter of the Indiana causes was transferred to the District of Columbia, and by an amendment (34), the whole litigation was consolidated into one suit in the District.

The controversy grew out of the purchases of about 31 or 32 lots or parcels of ground lying in the northwestern part of the city of Washington, which were made by the complainants in the space of 23 days, between May 27, 1872, and June 19, 1872, (220). The property cost $382,560.49. (220.) A part of the controversy relates to a charge for the care and management of this and other property from the time of the purchases until the end of 1876, or for about four years and a half.

The original bill and the amendment show that in April, 1872, the complainants, Sunderland and Hillyer and Mr. Stewart entered into an agree-

ment among themselves to buy an indefinite quantity of real estate in the northwestern section of the city, for speculative purposes; for this purpose Sunderland was to furnish one-half, and the others, each, one-quarter of the funds necessary.

It is charged, in the bill, that in April, 1872, an agreement was entered into with the defendants, then doing business in the city as real estate brokers under the firm name of Kilbourn & Latta, whereby that firm was, by the complainants and Stewart, employed as their agents to make for them the proposed purchases. The alleged agreement, set out by the complainants in their pleadings, is substantially as follows:

"That the plaintiffs and the said Stewart should entrust to said firm, as their agents, the negotiation for and the purchase of such real estate as the plaintiffs and the said Stewart might elect to require; that they should furnish to the said firm, when required, such sums of money as might be requisite for the purchase of the property, and that the said firm should be paid therefor a reasonable compensation, by way of commission, when the firm should make no charge by way of commission against the vendors of the property, but in case such charge should be made by the said firm against the vendors, that then no commission whatever should be paid. That the firm, in consideration of so being entrusted with the purchase of such real estate, and of the commissions which it might derive therefrom, should ascertain and point out to the plaintiffs and Stewart such lots and parcels of land as, in the judgment of the firm, might be most advantageously required by the plaintiffs and Stewart, and that the firm should advise and counsel, to the best of its judgment, knowledge and experience, the plaintiffs and Stewart,

in respect of purchase of any particular parcel of land which they, on their own motion, might suggest to the said firm as desirable to be purchased on their account; and that in all cases, the said firm should negotiate for the purchase of any real property to be acquired on account of the plaintiffs and the said Stewart, at the lowest possible rate at which it could be obtained from the owner, and after ascertaining the price at which any such property might be obtained from the owner, should fairly, and to the best of the knowledge and ability of the firm, inform the plaintiffs and Stewart whether the said price was such as to render their acquisition of the property desirable, and recommend to them whether they should purchase the property or not; that if the plaintiffs and Stewart consented to such purchase, the same should be made on their account by the firm, and that, upon receiving, at its request, from the purchasers, the cash required in the first instance, and, also, the amount of deferred payments, as the same might become payable, the said firm should make due settlement with the vendor or other persons entitled to payment, (1 and 35)."

The complainants also allege, in their pleadings, that, in May, June and July, 1872, large quantities of real estate were negotiated for and purchased, valued at about $370,000, and that about $100,000.00 was deposited with the firm to meet the cash payments; that as to each purchase the defendants represented that they had negotiated with the "owner" to obtain the lots at the "lowest price," and that the price agreed on was the "lowest price" for which the property could be obtained, and that they (the plaintiffs) relied upon those representations.

That, in April or May, 1872, plaintiffs called the

attention of said "brokers" to square 115, and requested the defendants to ascertain as to the owner and price thereof; that on or about the 25th of May, 1872, defendants informed plaintiffs that $65,000 was the lowest price at which the property could be obtained from the owner thereof, and advised the purchase thereof; that, relying on them, the plaintiffs authorized the purchase of the square, and on the plaintiff's representations that the sum of $20,000 was required by the seller, paid that sum, and it was conveyed to Latta as trustee for plaintiffs. But that these representations were false, and that the real price, instead of being $65,000.00, was only $40,000.00, and that the cash payment required was $8,000 instead of $20,000, and that such representations were made for the purpose of cheating the complainants and fraudulently obtaining from them the sum of $25,000.00, which the defendants appropriated to their own use. And that neither the plaintiffs nor Stewart took any part in the negotiations for said square, but that they left it entirely to the firm, and that the real facts in relation to this purchase were never disclosed to them by the firm, but were fraudulently concealed, and that they were entirely ignorant thereof until the year 1881 (3, 36); that in March, 1881, Sunderland, having his suspicions aroused, resorted to the record of the deeds, which disclosed to him the fraud which had been perpetrated (4, 37).

That they were, about the same time, and in substantially the same manner, defrauded in reference to the purchase of lot 17, in square 158; that they

were falsely informed that the purchase price of that lot was $8,316.00, which sum they paid to the firm, but that the price was really only $5,000.00, whereby the firm received and appropriated to themselves $3,316.00 (38).

That in substantially the same manner, and about the same time, the firm defrauded the plaintiffs and Stewart of the following sums through the acquisition of the following pieces of property in the city of Washington:

Square 155, the sum of $5,319.55; three lots in square 158, the sum of $2,663.70; and square 156, the sum of $22,973.00 (41, 42); that the real truth as to the last transaction did not come to their knowledge until January or February, 1882 (42).

That in December, 1872, Stewart sold his entire interest in the speculation to Sunderland (42).

That after the completion of the purchases, all of the property purchased, and also two other tracts in the same portion of the city, which cost $80,000.00, were left in the care of the firm for re-sale, whenever satisfactory prices could be obtained, and that in consideration of the probable commissions on such sales, the firm agreed that it would keep upon its books an amount as to the property, notify them of the amount of funds necessary to pay the taxes, interest, and the like, and disburse the same without any charge whatsoever for such services; but that because of the financial crisis commencing in 1873, no sales were actually made *prior to January*, 1877 (43).

That from the time the said agreement was made, to January 1, 1877, the plaintiffs sent to the firm more than $250,000.00, and that on December 31, 1876, the firm held a balance in cash due to them of not less than $20,000,00, and that on that day the firm secretly and fraudulently diverted the sum of $16,526, and appropriated it to their own use, on the pretext that such charge was for care and management of the said property from June, 1872. (43.) That said firm had not, in fact, exercised any care or management over any part of the plaintiffs' property in any other manner than by said agreement required. (44.)

That the defendants concealed this charge, and that the plaintiffs were entirely ignorant of said charge until June, 1878, and that no accounts had been rendered by said firm to them between June 26, 1872, and June 20, 1878. (44.) That on the 20th of June, 1878, both plaintiffs being in Washington together, for the first time in many years, they demanded an account, which being furnished, the said charge appeared thereon ; that they thereupon demanded that said sum be refunded to them (44), and further, they aver that they kept no accounts for themselves as to said matters, but relied upon the good faith of the firm.

That in January, 1877, they were informed by the firm that by an arrangement between the members of the firm all remittances on account of the property should be sent to defendant Latta, who would disburse the same under the same agreement as that

made with the firm in respect of such disbursements, and that accordingly considerable sums were sent to defendant Latta, who wrongfully appropriated for his own use, for care and management, the sum of $5,827.50, and that said sum is justly due the plaintiffs from defendant Latta. (45.)

That in 1872 and 1873 Sunderland, individually, purchased, through said firm, several parcels of unimproved real estate, which was left in the hands of said firm under the same terms as the joint property of the plaintiffs was left, and that out of the funds in their hands, and under the pretext of charging for the care and management of such property, the firm wrongfully appropriated to itself the sum of $5,973.00, and also the further sum of $1,000.00, which was done secretly, and was not disclosed to him until the month of July, 1878, and in the same manner as the other misappropriations set forth (46).

That defendant Latta, in the same manner and under the same circumstances, and on the same pretexts, wrongfully abstracted the sum of $1,672.00 of the funds belonging to said Sunderland, and transmitted to said Latta, between January, 1877, and June, 1878, which fact first came to the knowledge of said Sunderland by an account rendered to him by defendant Latta in July, 1878.

The complainants, by the prayers, ask for only money decrees, and in respect of each of the said items against the defendants, as members of the firm, and against Latta as to his individual matter.

The defendants answered the bill, and the amended bills, and denied specifically that any such special contract, as is alleged by the complainants, relating to the making of said purchases, was made by them.

They also aver, as matter of law, that such a contract if made, would have been void, because the same is contrary to public policy.

That the claims are stale, and that the complainants were guilty of laches.

That the alleged contract is void under the statute of frauds, because it was not to be performed within a year and was not in writing.

That if the complainants ever had such a claim, as is alleged, it is barred by the statute of limitations.

That the parties came together and stated and agreed upon an account showing a balance of $2,715.58, to be due from the said firm to the complainants, and the same was duly and fully paid, and that a receipt was given therefore by the complainants to the defendants, in full discharge of said balance and in full settlement of all of said matters.

That said Stewart is a necessary and indispensable party to the cause.

That the charges for care and management are just, reasonable and proper.

They deny all charges of fraud and that they withheld any knowledge or information from the complainants.

It was ordered by the Special Term that the cause be heard in the General Term in the first instance (721), and a money decree was entered, by which the court awarded to the plaintiffs $3,316.00, on account of the purchase of lot 17 in square 158, and $8,000.00 on account of the charge for care and management, and sum the of $2,500 as against Latta individually, on account of his charge for care and management by him bestowed on the property after January 1, 1877. All the other items of the claims were disallowed.

From this decree all the parties appealed.

Assignment of Error.

The appellants, Kilbourn, Olmstead and Latta, submit to this Court that the Supreme Court of the District of Columbia erred as follows, to wit:

1. By holding that the court had jurisdiction as an equity court to hear and determine such a case, there being a plain, adequate and complete remedy at law.

2. By holding that the alleged contract was a valid contract.

3. By holding that the claims of the complainants, according to the pleadings and proofs, were not barred by the statute of limitations and by laches.

4. By holding that said matters in dispute were not fully and finally settled, the balance ascertained and paid in full.

5. By holding that William M. Stewart was not a necessary and indispensable party to the cause.

6. By awarding $3,316.00 to the complainants on account of lot 17, square 158.

7. By awarding against the defendants and rendering a money decree in favor of complainants for $8,000, on account of excess in the charge for care and management of the property.

8. By rendering a money decree against Latta, and in favor of the complainants for $2,500.00, on account of his charge for his care and management of the property.

Statement of Facts.

I.

There never was any such agreement made between the parties as that set out by the complainants in their bill.

It is wholly inconsistent with the admitted facts, and unreasonable to assert that such a contract could have been made by the defendants with the complainants The complainants in this case, judging from the admissions made in the testimony in the cause, were lawyers of large experience and not a little ability; one of them has taken pains to put upon the record an account of the income which he received as a lawyer in a distant State, for a part of the time discussed in the testimony. Before the time when, they say, the extraordinary contract as-

serted and relied upon, was made, they each had had a great deal of experience in the matter of buying real estate; and at least one of them had such experience in the city of Washington.

The defendants were real estate dealers in the city of Washington, doing business under the co-partnership name of Kilbourn & Latta, and were, in fact, the pioneers of that business, having embarked therein in 1866. They had labored unceasingly to build up their business from that time until the organization of the Board of Public Works, in 1871, and the consequent change in the progressive atmosphere of the city of Washington, which immediately followed the advent of that enterprising organization. The defendants had, for a long time, been publishing a real estate journal in this city, (534), and had collected such statistics and other information as enabled them, practically, to command the real estate business in Washington. (531, 534, 535.) They were fully informed of the owners of available property, and had been employed to sell many pieces which were already recorded on their books, with detailed information concerning it. They had also the names of dealers in real estate in their possession; their office was the common place of resort for both buyers and sellers; and, in short, they had spared neither expense nor labor in acquainting themselves with their business, and to secure to themselves such facilities as would control and successfully manage the business in which they were embarked. In 1872, and at the time

when the complainants say they made their unprecedented contract with the defendants, the business of the firm was immense. It amounted to millions of dollars annually in the way of transfers of property through the instrumentalities of their office, and for the year 1871 alone, their commission account amounted to $25,000, and they had on their books for sale about 2,500 different pieces of property (535).

Every presumption must be indulged against the existence of such an agreement. On its face, if it contained the stipulations which it is alleged it did contain, it is one wherein the parties had stipulated to defraud third persons from whom property was to be purchased; it is an agreement whereby the defendants were, in fact, to act as the agents and brokers of parties having real estate to sell, and, at the same time, act as the agents and brokers of these complainants who were to be purchasers. It is an agreement which puts these defendants in the attitude of agreeing to sell property honestly entrusted to them by others as agents and brokers, and, at the very same time, occupying a fiduciary relation towards these complainants, whereby, according to the terms of this alleged contract, they were to get the property from the vendors at "*the lowest possible rate at which it could be obtained from the owner.*" In other words, while acting as the agents of the owner, they were to endeavor fraudulently to induce, as far as they could, their own unsuspecting principal to reduce his price for his

property for the benefit of these complainants. Not only is this set forth in this bill as being one of the stipulations of the contract, but the bill goes further, strengthening and confirming what we have said as to the position in which this alleged agreement places these defendants, and avers that they were not only to get the vendors to put the property down at the lowest price they could induce them to put it, but they were to get commissions from these vendors while thus working in the interest of the complainants. And the extraordinary averment is made that the defendants agreed that they would get these commissions from these vendors, and that the complainants should pay them nothing, excepting in cases where they could not thus extort commissions from the vendors. So that, in starting out with our inquiry as to whether such an agreement ever existed or not, we are entitled to the presumption that these defendants made no such immoral and illegal agreement, and we start with a presumption likewise against the complainants that any such an agreement was ever entered into. It cannot be presumed that these defendants made such a wicked bargain, however much the complainants may be willing to stultify themselves by alleging that they made it.

The defendants deny, by their answer, that any such agreement was ever made. In the bill, as originally filed, Kilbourn and Olmstead were the sole defendants, and in that bill the complainants, in calling upon the defendants Kilbourn and Olmstead

to answer expressly waived, an answer under oath, but before or about the time the filing of that bill they likewise filed a similar bill, alike in all its material averments, against the defendant Latta, in the Circuit Court of the United States for the district of Indiana—Mr. Latta being a resident of that State—and in that bill they called upon him to answer under oath the averments of the bill.

But while the original bill in the court of this District waived an oath to the answer, the order allowing an amendment, passed March 14, 1882, (30), required an answer in the usual way, and hence the bill, as it stood when first amended, did not waive an answer under oath—certainly not as to the averments in relation to the making of this alleged agreement. The whole bill, as thus amended, was thereupon answered by the defendants Kilbourn and Olmstead upon oath (47).

Latta filed his answer to the bill against him under oath, as required in that bill, and these two cases were, by agreement, consolidated, for the purpose of facilitating the final disposition of this litigation.

We have, therefore, the answer under oath of the defendants Kilbourn and Olmstead, denying the averments of this bill, and the answer of the defendant Latta also denying the averments under oath. So that, so far as the pleadings are concerned, there is the averment of such a contract on the part of the complainants, and an emphatic denial of it by all the defendants under oath.

It now becomes material to examine the testimony in respect of this issue, whether or not such a contract was ever entered into; and on that subject we have the testimony of the two complainants, Sunderland and Hillyer, and William M. Stewart, on the one hand and the testimony of the three defendants on the other. Outside of this there is no direct testimony in relation to this matter. All else that bears upon it is simply the gleanings from the business that was transacted between these parties. There are three witnesses on each side of the case on this point, all of them parties to the transaction, and all of them equally interested. It becomes important to examinto the testimony of these witness, with some particularity, as this is really the vital question.

Mr. Hillyer testifies, in regard to this contract, as follows: (120)

"Q. 7. How came you to employ the firm of Kilbourn and Latta in respect to the proposed purchases?

A. We deemed it necessary to employ some one, because we did not deem ourselves competent to attend to making the purchases judiciously ourselves. We selected that firm mainly, I think, on the recommendation of Senator Stewart, and because I, myself, having been acquainted to some extent with them, deemed them a very enterprising firm of brokers. I had a good deal of confidence in their ability, and upon talking to them, they represented, which representation we believed, that they had peculiar facilites for making purchases of property in that section of the city.

"Q. 8. What were the character and terms of the employment of that firm, with respect to the purchases you name?

"A. We employed the firm to act as *brokers* for us and as our *agents* in making purchases of such property as should be considered desirable. We agreed

to furnish them with money, and they agreed, when property was *designated*, that might be purchased to advantage, to investigate the matter, and negotiate concerning the purchase, and inform us what the property could be purchsed for, and make the purchase. They were to act in this matter strictly as our agents. The terms of the employment were that they were to have commissions upon the property purchased—the regular brokers' commissions. In this connection it was stated by the firm that oftentimes they would be able to make the seller pay them commissions as a further reduction of the price which he had fixed upon the property, and when they could get them in that way from the seller we should not be charged with them."

And on cross-examination, as follows:

×-Q. 15. In your answers to the eighth interrogatory of your direct examination you state the terms of your employment of Kilbourn & Latta. Will you state now where that arrangement was made? I want to know the place where you were and the day when you did it, and I want to know the individuals who were present at the time the terms of the employment were concluded.

A. The place was in the office of Kilbourn & Latta; the time I do not know exactly; it was, I think, either in the month of April, or the forepart of May some time. I do not remember just who were present when we first engaged them. We had a number of interviews about it, and I would not pretend to remember the details of any particular interview.

×-Q. 16. Were the terms of this business settled between you at one interview?

A. I think they were, so far as this; that in one interview we told them we intended to make these purchases, and had concluded to employ them to do it. To that extent I have no doubt it was settled in one interview. Whether anything more than that was done at one interview I could not say.

×-Q. 17. Do you know how many interviews you all had together?

A. I have no idea, but there was a good many.

×-Q. 18. Were Mr. Sunderland and Mr. Stewart present at the first interview?

A. I could not say with certainty, but I think they were all present when we employed the firm.

×-Q. 19. Who did the talking on the part of Kilbourn & Latta?

A. I have no recollection.

×-Q. 20. Did you have a general "sit down and talk" over the matter?

A. I do not remember; it did not take much talking. We told them we would employ them, and they were glad of it.

×-Q. 21. You told them that you had made up your minds to buy real estate, and to employ them as brokers?

A. Yes.

×-Q. 22. They were doing a great deal of business at that time, were they not?

A. There were the usual indications that they were doing a good real estate business.

×-Q. 23. They were doing an active business?

A. I thought they were.

We have also the testimony of the complainant Sunderland, in reference to the alleged contract; his testimony is as follows, (142):

Q. 16. Under what arrangement or agreement was the firm of Kilbourn & Latta employed in respect of making these purchases?

A. We went to them as real estate brokers and employed them to purchase for us such real estate as we might point out to them, or they themselves might designate, if the same could be purchased at a price such as should be recommended by them, and if such price when reported to us should meet our approval.

Then question 30, page 144:

Q. What was the arrangement about compensation with the firm of Kilbourn & Latta for making these purchases?

A. The firm told us that very often they could get commissions from the seller of the property; that when they could get commissions from the seller they would charge us no commission; where they could not get commissions from the seller we would pay commissions.

Q. Did they represent to you, or did you understand from this, that the firm were or proposed to be the agents, in any case, of the sellers of the property?

A. They never so represented or intimated to us.

Q. Was it stated in what way they would be able to charge commissions for the sellers? If so, explain what was said on that point:

A. My recollection is that they stated that very often when they could get the seller down to what he said was the lowest price that he would take for a particular piece of property, they could then get commissions out of that price.

Q. And that would amount to so much reduction to yourself and your associates?

A. Yes, sir.

On Mr. Sunderland's cross-examination, he testifies in respect of this agreement as follows, (page 154).

×-Q. 42. Was there anything said about any particular piece of property at that time?

A. At what time do you mean?

×-Q. When you made this bargain with these gentlemen.

A. During the time that we were negotiating for property through the firm of Kilbourn and Latta, there were particular pieces of property designated, amongst others square No. 115.

×-Q. You are getting ahead of me. I want to get all the facts out about this agreement before we get down to particular pieces of property. Was there anything stated when you first employed the firm of Kilbourn and Latta as to which pieces of property in the northwestern part of the city you were to speculate in?

A. I think not.

×-Q. Well, what was the extent of the understanding between the firm and you at this first interview, when you made known your desire and the desire of your two associates to speculate in real estate here?

A. We employed them, Kilbourn and Latta, to purchase for us real estate in the northwestern part of the city.

×-Q. How did you employ them? In writing or verbally?

A. Verbally.

×-Q. Did you do it or did your associates do it?

A. I think we all consented to the employment of this firm.

×-Q. Somebody had an interview with Kilbourn and Latta; who was it?

A. I had my self interviews with them.

×-Q. More than one?

A. Yes.

×-Q. When did you have these interviews?

A. In the spring of 1872.

×-Q. In May?

A. *I think it was in May*, 1872.

×-Q. How many of those interviews did you have with them?

A. I cannot remember how many.

×-Q. Did you have one or two or three?

A. More than that.

×-Q. How many interviews were required to conclude this employment that you have mentioned?

A. Possibly not more than one *to conclude the employment.*

×-Q. That employment consisted in your telling Kilbourn and Latta that you intended, with these other two gentlemen, to engage in speculations in real estate in the northwestern part of the city, and that you would want their services in the matter. Was that the extent of the employment?

A. I think so.

×-Q. Nothing beyond that?

A. Nothing.

×-Q. Then there was nothing said about compensation to them or the terms of their engagement in particular?

A. I do not remember that at that time there was anything else said.

×-Q. You found these gentlemen engaged in the business of buying and selling real estate, and you went to their office and told them you intended to engage in this business and would probably require their services. That was about the way of it, was it not?

A. They were real estate brokers, recommended to me, and I and my associates employed them to buy real estate for us in our interest.

×-Q. On what terms?

A. The terms were that if they could not get commissions from the sellers of property we would pay them commissions.

×-Q. Well, what else?

A. Nothing else.

×-Q. Was there anything stated about their serving you exclusively and you employing them exclusively?

A. I do not think there was anything said, but my understanding was that we employed them as our agents and brokers.

×-Q. To do what?

A. To buy real estate for us in our interest.

×-Q. Were you under any obligations to confide all your business to their care by virtue of that arrangement?

A. I do not think we were under any legal obligation to intrust them with our business.

×-Q. Were you under no contract obligation at all to employ them if you did not want to?

A. Under no contract obligation.

×-Q. If you thought some other man could buy a piece of property that you wanted to better advantage than they could, you were at liberty to go to that other man, were you?

A. We did in one instance go to another man.

×-Q. Well, you were under no obligations not to go to another man?

A. No.

×-Q. Then there was no general bargain between you about it, that they were to serve you all the time or you were to employ them all the time?

A. There was.

×-Q. What was it?

A. That they were to be our brokers for the purchase of real estate in the northwestern part of the city.

×-Q. Did you pay them anything by way of binding the bargain at that time?

A. We did not.

×-Q. 74. Was there anything said at this original contract between you and Kilbourn and Latta as to amount of compensation they should charge you?

A. Never.

×-Q. Was there any stipulation as to the amount of money you should furnish to the concern?

A. We were to furnish the money necessary to make the cash payments.

×-Q. 78. (p. 150.) Well, am I correct in this understanding, that you simply went to Kilbourn & Latta, after you gentlemen had made up your minds about this speculation, and told them what you intended to do, and that you should want the benefit of their services as brokers. Is that right?

A. That is right.

×-Q. Then there were no details about how things should be done at that time?

A. No; no details.

×-Q. You knew when you went to them that Kilbourn & Latta, or that firm, was largely interested with other people in speculation, did you not? I mean speculation in real estate in Washington.

A. I had understood that they were connected with the real estate association.

×-Q. Well, you knew the fact also that they were buying and investing largely in land in the northwestern part of the city, that real estate association of which Kilbourn & Latta and the members of that firm were parties?

A. I did not know where they were buying.

×-Q. 85. (157. Did you know when you went to Kilbourn and Latta that they were also engaged for other parties who were speculating in real estate, and interested with them?

A. They told me so. I knew that they were buying real estate for other parties, but I did not know that they were personally interested in the purchases.

This was his statement of what he claims to have been the contract when he was originally called by the complainants to testify.

Subsequently he was recalled, and on cross-examination as to this contract he testified as follows, (293):

×-Q. I understand from you examination-in-chief that you claim there was an employment by you and your associates of Kilbourn and Latta, as your agents or brokers, for the purpose of making these purchases; am I correct in that?

A. You are.

×-Q. Now please state whether any definite agreement was made with Kilbourn and Latta; and if so, when it was made, and by whom?

A. I understood the agreement to be a definite one; that is to say, they were to negotiate on our account

for all such property as we should point out or designate, and report to us the lowest price at which the property could be purchased, and then when they had so reported *we were to determine whether we would take the property or not.* Exactly when that arrangement was made I cannot now remember. We had a number of conversations with them in reference to the project of buying a considerable amount of unimproved property in the northwestern part of the city, and advised with them very often as to the propriety of making such purchases, and as to the prospective profits to be made upon such purchases when they told us their terms, which was to purchase on commission, and that they were ready to enter upon negotiations as soon as we directed them to do so. When we gave the first order I do not now remember.

×-Q. Was there any agreement made more definite than what you have already stated, or any other agreement than what you have just stated?

A. I think it was a little more definite than that; that they held themselves ready to make on our account all purchases that we might desire them to make, if in their negotiations with the owners of the property designated they could purchase at a price which they could advise us to accept. I know of nothing more definite than I have thus stated.

×-Q. And that is all of the agreement that there was between you, if I understand you?

A. I do not remember anything else.

×-Q. Did you place yourselves, by any agreement that you made with them, under any obligations to go to them exclusively in the transaction of your business?

A. I do not know that we legally bound ourselves to go to them alone, but the understanding was—

×-Q. I do not want the understanding; I want the agreement; I am now confining myself to the agreement between you?

A. I do not remember any agreement that would have absolutely bound us to go to them alone.

×-Q. You were at liberty to go to anybody else in regard to any purchase you desired to make?

A. Legally, I suppose we were.

×-Q. In point of fact you did, did you not?

A. In one instance.

×.Q. What instance was that?

A. In the purchase of certain lots in square 195.

×-Q. Of whom did you make those purchases?

A. In my direct examination I am made to say that it was Colonel Barrett; I think it was Colonel Barrett's brother.

×-Q. Who made this agreement that you have been speaking of on the part of yourself and associates?

A. That I cannot remember; I am quite certain that Mr. Hillyer and I personally went and told them to go on and make the negotiations; I do not know whether Mr. Stewart was present or not.

×-Q. That was when you gave them directions to make some purchases?

A. That I understood to be the close of the arrangement between us; we had talked the matter over a great many times; we were to buy an indefinite amount of property, and they were to purchase for us as our brokers.

×-Q. Well, now, what I want to get at is, when that agreement was made and who made it, so far as your side of the case is concerned?

A. I might say that we all made it.

×-Q. Were you all together?

A. I am not certain whether Mr. Stewart was present or not.

×-Q. Where was that meeting?

A. At the office of Kilbourn and Latta.

×-Q. Now, is what you have been stating as an agreement simply your conclusions as to a great number of conversations which you had had with Kilbourn and Latta touching the prospective purchase of real estate in this city?

A. I think not ; when we finally came to the conclusion to commence purchasing, and gave them some idea of the amount of property we wanted to purchase, and after, at the solicitation of the firm, we agreed that the title should be taken in the name of Latta as trustee, Mr. Latta said that property belonging to other parties stood in his name as trustee, and to keep our property distinct from the property of others which he held in that way he would divest himself of title to all other property, except that which we contemplated purchasing, and such I think would not have been the case if it had not been agreed between us that they should do our purchasing.

×-Q. So you argue that there must have been an agreement from that fact that you have just stated ?

A. That is one of the facts which led me to the conclusion.

×-Q. That there must have been an agreement ?

A. Yes, sir.

×-Q. So that you are not able to state in terms any definite agreement which was ever made between yourself and associates on one part and Kilbourn and Latta on the other ?

A. There was an agreement, but I cannot state the time when. But we arrived, after many conversations, at the conclusion that we on one side were to purchase and they on the other side were to act as our purchasers and as our brokers.

×-Q. Who conducted that conversation which led to this conclusion ?

A. On our side we all talked ; on their side Kilbourn and Latta.

×-Q Can you state anything that was said by anybody in connection with this matter at the times indicated ?

A. I cannot repeat the language of one.

×-Q. And nothing more definite or distinct was ever concluded upon than what you have already stated ?

A. I think that was as definite as I can now remember it.

×-Q. And the whole scope of the agreement you have stated?

A. I have.

×-Q. Then state if there is anything else in connection with it that you can remember—state what it was.

A. Do you mean prior to the agreement?

×-Q. I am speaking of the agreement.

A. I cannot state anything more definite.

×-Q. You have stated all that occurs to you?

A. All that occurs to me now.

Q. 159. Was there anything in your agreement which required them, if they knew of sales in that part of the city, to notify you that the property was for sale before offering it to anybody else?

A. I do not think there was any legal obligation upon them to do so.

Q. 160. Your agreement did not cover anything of that sort, did it?

A. No, sir.

Q. 161. They were at liberty to negotiate with anyone they saw fit to negotiate with in relation to the sale of any property that might come to them for sale?

A. Except such pieces of property as we had prior to that time pointed out.

Q. 162. Prior to what time?

A. Prior to the time that they might negotiate a sale to anybody or might be in negotiation for a sale to anyone else.

Q. 163. I do not know that I exactly understand your answer, do you mean by your answer that, when you made your agreement, that agreement required them to negotiate with nobody but you as to such property as you might have pointed out to them and indicated your desire to purchase. I want to know whether that was embraced in the agreement or not?

A. I do not think, in terms, it was embraced in the agreement.

Q. 164. Whatever you may have said on that subject, therefore, is merely an inference that you drew from the agreement, is it?

A. I understood that from our relations, after their employment by us as brokers, that, when we authorized them or directed them, to negotiate for a particular piece of property, that they were not at liberty to negotiate with anybody else until we had arrived at a conclusion to take or reject that particular piece of property at the price reported to us by them. It was the result of the relations and obligations between principal and agent rather than of anything which had been embraced in terms in the agreement.

Q. 165. It is your conclusion, then, of the law as to the relations between principal and agent, rather than any specific agreement that was made between you and them?

A. Yes, I think that is correct.

Q. 166. Now, that makes it necessary to know specifically what your agreement was, and I desire, therefore, to ask you whether that agreement was anything more than this, in substance. That you had repeated conversations with them in regard to the purchase of real estate in that quarter of the city, and that you expressed to them your desire that they should act for you as your brokers in regard to any purchase that you might wish to make. Is not that the sum total of the whole thing?

A. I think that is about the substance of it. My best recollection of it now is that the most of the conversations we had were as to the advisability of purchasing property. We asking and receiving their advice as to the probability of making a speculation by the puhacrse of property in that neighborhood. After repeated conversations they told us their terms, and then my recollection is that we consulted together ourselves, and concluded to make the purchases. I do not think much attention was

paid to the terms, because we supposed, at least so far as I was concerned, I supposed, they were the terms of any broker in regular business here, and that they would charge as regular brokerage. We went to them and told them that we accepted their terms. It was chiefly as to commissions.

Q. 167. In other words, you and your associates had repeated conversations with them touching the advisability of your entering into this speculation, you advising with them or conferring with them touching the probabilities of an increase in value of real estate in that part of the city, and the result of those conversations was that you came to the conclusion that you would embark in this business, and nothing particular was said in regard to the terms upon which you would engage in that business, so far as your relations with them were concerned. Am I correct in that?

A. They stated before we concluded the purchases, and I think Mr. Kilbourn was the man who told us, that they would charge, as I have before stated, commissions in all cases where they could not get commissions from the seller.

Q. 168. Then it is true, is it not, that in determining, or with a view of determining, whether you would embark in this business or not you had repeated conversations with them touching the admissiabilty of going into a speculation of that kind and touching the prospect of making profit out of it?

A. That was the subject of conversations.

Q. 169. And you say that in that connection they told you they should charge commissions on the purchases where they could not get commissions from the vendors? Is that right?

A. That is so.

Q. 170. And that is the whole of it, is it not?

A. I do not know that in those conversations there was any thing said in reference to any charge for taking care of the property. I think that was about the sum and substance of what we were told by them, and my recollection is that, when we concluded to

buy, we paid very little attention or attributed any little importance to the matter of commissions, but simply told them we had concluded to make the purchases.

Q. 171. Then the sum and substance of the whole matter was about as I have stated?

A. I think so.

Q. 172. After these repeated conversations and after they had stated to you what their charges would be, you came to the conclusion that you would make the purchases and the purchases referred to were made? All those purchases, I believe, were made within a period of about twenty or twenty-one days, commencing in May and terminating in June, and extending over a period of twenty-one days?

A. That is what the account shows, but they were negotiating for some pieces of property some time before any purchases were consummated. At any rate, they were directed to negotiate some time before the first purchase was made.

Q. 173. Well, the purchases were actually made within about the period I have stated, I believe?

A. I can only answer that by reference to the accounts, because I have no other means of recollection. The exhibit will show the dates at which the purchases were consummated, I suppose.

Q. 174. Then, if I understand you correctly now, you were in error when it was averred in this bill that these brokers should ascertain and point out unto your orators and the said Stewart such lots and parcels of land in the said section of the said city as in the judgment of the said firm might be most advantageously acquired by your orators and the said Stewart?

A. No, they pointed out some pieces of property to us, and after they pointed them out, we went and examined them.

Q. 175. O, no, you do not get the point of the question, I think. I am talking about the agreement that was made between you. The agreement is stated

one way in the bill and another way in the testimony, if I understand the testimony.

A. I do not remember that there was any distinct agreement to that effect. As a matter of fact they did do it.

Q. 176. That part of the bill, then, is erroneously stated?

A. No; I think not.

Q. 177. Well, do you say now there was any such agreement?

A. I say I do not know that there was any distinct agreement of that kind.

The foregoing is Mr. Sunderland's statement of this alleged contract; and he seems to have been the active man in making it. He owned three-fourths of the interest in the business. He is the man who had these interviews, and from his evidence it seems to us clear that there never was any such contract made. Certainly this testimony of Mr. Sunderland does not prove any such contract. It shows that instead of there having been a definite arrangement made between the complainants and the defendants in respect of the purchase of real estate, that they went to these defendants, knowing them to be engaged with other people in real estate transactions and in a real estate brokerage in the city of Washington, and stated to them that in the matter of their purchases they would need the advantages of their office and its facilities and information as to property for sale. To assert that the most material part of a contract, to wit, the compensation which the defendants were to receive for their services, was wholly ignored, is most unreasonable. That, of all other things, is the one which would have been distinctly understood if these parties were making a formal

agreement such as is claimed in this bill. But conceding every word that Mr. Sunderland says to be in exact accordance with what transpired, it falls far short of proving the contract upon which this suit is brought. The most that it proves is that these parties had several conversations in respect of buying property through the firm of Kilbourn & Latta. It has not a single element of an agreement in it; and Mr. Sunderland himself is unable to state what occurred at any one conversation, or to state any definite conclusion that was reached in respect of the matter; this clearly appears from the testimony which we have above quoted.

The next testimony they rely upon is that of William M. Stewart. As to this contract, he testifies as follows (25):

"On consultation among ourselves, Messrs. Sunderland & Hillyer and I, we came to the conclusion that Kilbourn and Latta should be employed to negotiate the purchas we contemplated, and accordingly we consulted with and employed them in the business. It was distinctly understood that they should negotiate for *such pieces of property as we desired to purchase from time to time*, and buy the same at the lowest possible price, and that they were to have a commission on all purchases made by them, but that in case the vendor should apply to them to sell that they should obtain a reduction from the purchase price of the commission which the vendor in such case would be liable to pay, and in that case it would be the same to us as if we paid no commission. This arrangement was made in consideration of the extensive purchase we proposed to make."

Then on cross-examination he says (27):

"The arrangement was made with both Mr. Kilbourn and Mr. Latta. I think they were both present when they agreed to undertake our business as brokers. I do not remember the day they were employed by us. It was shortly before the first purchase was made. The contract with them was made in the office of Kilbourn and Latta, in the back room of that office—the usual place of consultation. I think Messrs. Latta, Sunderland, Hillyer, and myself were present, and no one else. The exact terms of the agreement were, *as near as I can recollect*, that the firm of Kilbourn and Latta was to undertake to purchase *such pieces of property as we might desire to purchase and charge a commission therefor in each case;* but in case where the vendor sought them, and in which case they were entitled to charge a commission as against the vendors, that the same should be deducted from the purchase price."

The court will observe that, by the averments of the bill, these parties proposed to engage very largely in the purchase of real estate in the city of Washington; That in making these purchases the defendants were to act as their brokers; and yet we find in the cross-examination of Mr. Hillyer, in respect of this contract, (see question 55, p. 129,) that while these parties actually did purchase property to the amount of about half a million of dollars, they never paid to the defendants as their brokers or agents any commissions, excepting the sum of $329.

×-Q. 55. As a matter of fact, your association has never paid any commissions to Kilbourn and Latta and Olmstead, unless it is the little item of three hundred and thirty dollars on square 67, have you?

A. That is the only commission that is charged in their account, and, so far as I know, the only one

that was paid directly by us upon the purchase of that property.

×-Q. 56. Were you under any obligations to confine yourself to the services of the firm of Kilbourn & Latta in making your purchases?

A. We were not.

×-Q. 57. And they were under no obligations to serve you unless they wanted to?

A. They were not; that is to say, that at any time we could have said to the firm that their services were no longer required, and at any time they could have said to us that they did not propose to serve us any longer.

And then Mr Hillyer proceeds to say, in answer to interrogatories put to him, that the complainants were under no obligations to confine themselves to the service of the defendants in making their purchases, and that the defendants were under no obligations to serve the complainants.

We have, therefore, the extraordinary statement that the contract, of the kind we have above indicated, was made having relation to the purchase of property to a very large amount by the complainants, and yet the contract was of such a character that the complainants were not bound to deal with the defendants, nor were the defendants bound to serve the complainants. In other words, it was an agreement which was not an agreement, and was not binding on either party. It thus appears that, as to all the purchases that were made by these parties, with a single exception, the defendants were acting as confidential agents of the vendors of the property, who sold to Sunderland and Hillyer.

[For the testimony generally as to the alleged agreement, see pp. 288, 290-301, 308, 327 to 336, 413 to 419, 425 to 429, 432, 472, 536 to 539, 542 to 546, 550.]

Now, that is substantially the testimony in respect of the existence of this alleged contract. From this it is impossible to charge these defendants with the obligations of a contract such as is set up in the bill. It in no degree establishes the existence of such a contract. Everything that is charged in the bill in respect of all purchases and sales of real estate might be true, and still not violate any contract, which Mr. Stewart thus mentions in his testimony. Mr. Stewart's testimony shows that the defendants had the right to take business from vendors of real estate. There is nothing in what he says in respect of this contract to preclude them from doing this. And if they had the right to act for vendors, as they undoubtedly had, according to Mr. Stewart's statement of the arrangement, they had the right to do for those vendors the best they could in the way of the sale of property thus entrusted to their care. It was their duty to do the best they could; and if these complainants entered into even such an arrangement, as Mr. Stewart says they entered into, the complainants have no right to object, having voluntarily put themselves in that attitude; these defendants were bound to do their entire duty to the parties for whom they were acting as agents to make sales of property. And if the agreement was precisely as Mr. Stewart says it was, there was nothing in it to preclude these defendants from selling to the complainants any property they themselves had or might acquire at such prices as the complainants were willing to pay.

The following testimony of the complainant Hillyer, shows that there was not a piece of property purchased by them through the instrumentality of, or in connection with, in any way, these defendants,

that they did not purchase upon their own judgment as to its value after an inspection thereof, (296):

Q. 139. Did they buy any property for you except such as you designated that you desired to buy?

A. I think they recommended the purchase of lots in square 158, which we afterwards examined and thought it desirable property; and they purchased several lots in that square for us.

Q. 140. Did they ever make any purchases for you of property before you had yourselves made an examination of the property and determined to make the purchase?

A. I do not know of their having made any purchase for us prior to our examination of the property. When we made an examination and thought the property desirable, we instructed them to buy it or negotiate for it, and get the lowest price for which it could be purchased, and report to us.

Q. 141. Did they in any case make a purchase for you without your previously being advised as to the price at which the purchase could be made, and without your having learned what the price was, examining the property, and instructing them to make the purchase at the price named?

A. I think they made several purchases where, after reporting to us the price, we did not examine the property after the report was made. In the purchase in square 158, I do not think we examined any particular lot that was ever designated by them, but we examined, after their suggestion, that it was a good square to purchase in, generally the square, its location and situation. But as to particular lots, I do not know that we ever examined them.

Q. 142. Well, these were lots in open, unimproved squares?

A. In square 158 there were some improvements.

Q. 143. But I am speaking of the property that you were dealing with. It was open, unimproved property?

A. With few exceptions, it was unimproved property. There were some shanties on two of the squares.

Q. 144. You examined the squares, the locality of the property, knew its situation, before purchase was made; that is the fact?

A. Yes, sir.

Q. 145. Then you knew the price at which the property was to be purchased. That is so, is it?

A. They reported to us the price, and represented it to be the lowest price.

Q. 146. They reported to you the price; and after having made an examination of the property, and after being advised or informed as to the lowest price as reported by them, you authorized them to make the purchase. Is that correct?

A. That is correct.

Q. 147. So that in all cases of purchases made on your account, before the purchases were made you were fully advised as to the character of the property and the price to be paid for it?

A. Yes.

Q. 148. And you assented to these prices and purchases?

A. We assented to the purchases at the prices reported.

Q. 149. And the purchases were accordingly made?

A. Yes, sir. (297.)

Therefore, whether they purchased it from some outside party, who was the owner, or whether they purchased it from these defendants, they being the owners, and whether they knew who was the actual owner of the property or not, is wholly immaterial. They were acting upon their own individual judgment, and it seems that they had great confidence in their own judgment which, they say, were derived from a long course of business as lawyers and dealers in real estate, in large interprises.

We submit that, upon their own testimony, they have utterly failed to establish this agreement as as they have averred it in their bill. The most that they have done is that they have testified that they had many conversations in respect of the matter of making purchases for the purposes of speculation, and that from time to time they did make purchases of property as suited them, at prices which were satisfactory to them, upon their own judgment. That is all that they have proved; and it seems to us impossible, if the case rested upon this alone, for a court of justice to say that these defendants entered into such a very foolish and villainous agreement. The testimony on behalf of the defendants is unqualified and emphatic that no such agreement was ever made. With this direct, unequivocal, and emphatic denial by each of these defendants that they ever made any such contract, and with the assertion on their part, which is entirely consistent with all the circumstances and surroundings of the case, that these complainants came to them, just as other people came to them, who were desirous of purchasing real estate, and that they negotiated sales to the complainants on behalf of vendors who had placed their real estate in their hands for sale just as they did with all other persons who came to purchase real estate through them, and, superadded to this, the most significant fact that in all the purchases that were made by these complainants through the defendants, they never paid commissions, except in a single case,—it seems to us, from all these facts, that it is impossible to maintain the existence of such a contract as is relied upon by the complainants.

Mr. Sunderland testified that from the fact that the deeds were not recorded until October, 1877, he concluded the firm did not wish him to see them (161); but Olmstead testifies that this was the understanding, because, if the deeds should go on record, the fact would have a tendency to excite the real estate market to the disadvantage of the plaintiffs (540, 545, 594).

II.

One of the matters of complaint on the part of the plaintiffs is a charge of $16,526.67, made against them by the firm at the time of its dissolution, Dec. 31, 1876. The court below held that this charge was too high, and this action of the court constitutes the principal ground of complaint on the part of the defendants below, on their appeal here.

It appears by the testimony that, shortly after these purchases were made, these complainants left the city of Washington, went to Europe and elsewhere, and were but little of the time thereafter, until 1878, in the city of Washington. They had made purchases of real estate to the amount of nearly half a million of dollars for the purposes of speculation. They had made cash payments on this property, and there was a large amount of deferred payments to be taken care of. There were taxes accruing and special assessments for street improvements, &c., to be looked after. All the purchases they made, they made within a period of twenty-three days, in May and June, 1872. Contemplating being absent from the city of Washington, it became necessary for them to make some arrangements by which this property should be cared for in their absence, and they aver

in their bill (par. 10) that, having made the purchases, they then arranged with defendants to take care of the property, &c. This was a separate and distinct arrangement.

One of the members of this firm, Mr. Latta, for convenience in the matter of making transfers of the property in the event of sales, had taken the titles of nearly all of this property in his name as trustee, and had executed his individual notes for a very large amount, about $127,000.00, of deferred payments. (290, 291.) From June, 1872, until about July, 1878, these complainants paid no personal attention whatever to this property. Sunderland left this city in May, 1873, and did not come to it again until June, 1878—five years. It is not disputed that as to the matter of making deferred payments, the payment of taxes, the looking after assessments, and all matters appertaining to the management of this large property, these defendants, especially Mr. Olmstead, had charge. In 1876 the firm of Kilbourn and Latta was dissolved, Mr. Latta going out. During these four years they had been looking after the interest of these absent complainants; the complainants had been sending to them from time to time moneys with which to meet deferred payments. From the fall of 1873, after the panic, there was no market for this property. It could not have been sold for the amount of the encumbrances, and there was no way in which these complainants could get out out of this speculation without great loss; they were obliged to hold on to it until there should come a change in prices. Now, when the firm of Kilbourn and Latta was dissolved, Mr. Latta retiring, it became necessary for them to settle up their affairs, and, as an item of their

business, they charged the defendants for the care and management of this property during this period of four years and a half, a little over $16,000. The complainants allege that this was a misappropriation of funds, in the hands of the defendants, belonging to them. In other words, and the fact is, that there was in the hands of the defendants a large amount of money to the credit of complainants at the time of this dissolution, and the defendants applied, of that sum in their hands, the sum of $16,526.67 as compensation for the services they had rendered in respect of the property during these four and a half years. This sum the complainants are seeking by this bill to recover.

To this we answer:

That the complainants left this property in the care of these defendants. During these years the defendants did care for and manage this property. They looked after the deferred payments; they procured extensions of time; they negotiated loans to meet deferred payments; they paid taxes; they looked after assessments; they prevented trespasses upon the property. There was in these purchases a very large number of lots, and, in respect of assessments, the (assessments being made against each lot separately,) it involved a separate examination as to each in respect of this matter. In short, they did all that is necessary, ordinarily—indeed, extraordinarily—to be done in the care and management of about a half a million dollars' worth of property, upon which maturing obligations given, many of them by one of the firm, for deferred payments of purchase money, which were to be protected, taxes to be paid, assessments to be looked

after, and protection against trespassers was required; the evidence of the defendants is that this took a very large proportion of the time of one of these defendants during the period above allued to.

We claim that the evidence shows that the services that were rendered in this behalf were worth all that the defendants charged for them. The defendants testify that the complainants were notified that they would charge one per cent. for this care and management. Mr. Hillyer testifies that the matter was talked about between them; that he introduced the subject to the firm, but that there was no agreement concluded. We do not contend that there was a definite agreement made in respect of it, but the complainants were notified that the defendants would charge them for that care and management as early as October, 1873, and no dissent from that ever came from the complainants. (See as to this labor, &c., pp. 90, 149, 346-8, 392-3, 403-7, 450, 426, 427, 477, 481 to 495, 528-30.)

Mr. Hillyer, who managed the case as counsel until the close of the testimony in behalf of the complainants, in reference to an agreement on this branch of the case, made the following cloudy and unsatisfactory statement. (p. 123):

Q. Subject to what arrangement or agreement, if any, were these services rendered, as far as you know?

A. I never knew of any agreement in respect to it prior to 1875. I had understood that these services were being rendered by them as brokers in consideration of the property being left in their hands for sale, but, so far as I remember, nothing was ever said about it until sometime in 1875, when I had a conversation with Kilbourn and Latta in reference to the property. I was about to go to San Francisco,

and went to see them before going to talk over prospects. The prospect for sale at that time seemed somewhat gloomy, and they stated that there was at time no demand for property of that kind, at the same time saying they thought business would revive very soon. I said to them, and the remark was suggested by the fact that the sale of the property seemed to be rather remote, that they were having some trouble in keeping our accounts, and receiving and disbursing our money, attending to taxes, &c., and that I wished to know whether they supposed they were entitled to any compensation independent of the commissions on their sales—that is, the sales which might be made. I do not remember the exact language employed, but it was substantially that, as I remember. Mr. Kilbourn did not express any opinion, at least any positive opinion, in regard to the matter. Mr. Latta suggested that the firm were not only having some, and, as he represented it, very considerable trouble, but that they would be very useful to us in disposing of the property, and that he thought they ought to be entitled to additional compensation. I think he made some suggestion also as to the amount of the compensation, but that I do not remember, or at least I do not remember what it was. I think it was an increased percentage upon the sales of the property that were to be made, but I am not sure. At any rate, I stated that I did not consider that the services that were being rendered were considerable; that they were no more than any broker would render who had property in his hands for sale, and that we ought not to be called upon to pay anything in addition to the commissions which might be realized upon sales, and I stated to them that I was satisfied any other broker in the city would be glad to take the property out of their hands and do what they were doing for the chance he would have of selling it. There was very little said in conversation upon this subject, but the result of it was and it is that which I remember distinctly—that they should go on and perform their

services, and should charge us nothing for them except that if, as they then suggested to be probable, we should require to make loans, in order that the property might carry itself there after they should charge the regular commissions upon making the loans, and also that the property should be left in their hands for sale, and they should charge the regular commissions if sales were made.

Q. 22. Did this conversation relate to past services, or to future, or to both, which you have mentioned?

A. It mainly related to future services. Probably it might, in one sense, have covered what had been past, but I do not think there was anything said in the conversation in reference to any charge for past services. I am very certain there was nothing said in reference to an annual charge for services.

Q. 23. Did you, in this conversation, or at any other time, make any suggestion as to the amount of compensation?

A. I did not. I distinctly repudiated the whole idea of our making any compensation to them for these services, and if I did not say it directly, I said sufficient, so that it must have been understood by them, that if they were insisted upon we would take the property and put it into the hands of other brokers, who I was satisfied would attend to it in that way.

Mr. Latta, who is credited by all with having represented the firm in the conversation mentioned above by Hillyer, gives his recollection about it in the following words: (p. 90.)

Q. At that interview was anything said by Hillyer about the care and management of this property or about compensation therefor?

A. During that interview Hillyer wanted to know what we proposed to charge for the care and management of this property, and looking after those de-

ferred payments, taxes, &c. His conversation was chiefly with me, although Kilbourn and Olmstead were standing by. I having attended to most of the business we had in purchasing all that property, I told him that the firm had talked it over and we had decided that so long as the property remained in our care and under our management, for looking after the disbursements, paying taxes, &c., we thought a fair compensation would be one per cent—annum of the purchase price of the property. He thought that charge was more than we ought to make, and suggested that he thought that three-fourths of one per cent. per annum would be a good charge. I was firm in my determination, and so expressed it to him, that I would not consent, as a member of the firm, to accept less than the compensation I had named, which was one per cent. of the purchase price of the property per annum. He left the office without consenting, in so many words, to the proposed charge, and without making any other arrangement. That was the last and only conversation or consultation on the subject, until about the time of the dissolution of the firm of Kilbourn and Latta, in the last of 1876, when, knowing the depressed condition of real estate, and realizing the fact that these men did not make a success of it, the firm determined then that they would be content with a charge of five thousand ($5,000) dollars a year, which they made and entered on the books of Kilbourn and Latta, and which charge was below what the actual services for the care and management of the property were really worth.

The date of this conversation is fixed by Olmstead in October, 1873, and he corroborates Latta as does Kilbourn. (151, 349, 350, 425, 426, 477, 529, 573, 574.) This evidence conclusively shows that the plaintiffs had notice in 1873, that they were to be charged for the labor of protecting the property, keeping accounts, and the maturing notes, and for

the settlement of taxes and assessments, and the questions arising therefrom. This fact, therefore, leaves only the question of the proper amount open for discussion.

The theory of the complainants in respect of this is in substance this: That the expected advantage that the defendants would have from the future sale of the property would be sufficient compensation for their services in taking care of and protecting the property, as well as taking care of the dishonored and accruing obligation of the complainants; and yet the court will find upon an examination of the evidence that there was no arrangement by which the complainants were precluded from placing this property in the hands of any other brokers for sale or selling it themselves, if they saw fit to do so; and in point of fact, as appears by the testimony, they did put the property into the hands of Mr. John Bull for sale as soon as the market began to revive. If their theory is correct, these defendants were managing this property, having all this responsibility through these years, with no sort of assurance that they would ever have the sale of the property. And it is therefore the only question whether they are entitled to a fair and reasonable compensation for the services they actually rendered to these complainants in respect of this matter.

Again, in the month of November, 1877, the defendants rendered to these complainants a detailed account in which this charge of $16,526.67 appears under date of December 12, 1876, thus bringing to the attention of the complainants direct notice of this claim for the care and management of the property. And here we wish to particularly attract the

attention of the court to the fact that in the testimony-in-chief of complainants, as well as in the bill, they deny that they had any knowledge whatever of this charge until June, 1878, when they say they came to the city of Washington. They testify to that with great vigor, and they have asserted in their bill, apparently for the purpose of avoiding the bar of the statute of limitations, that this charge was concealed from them, and that they had no knowledge of it until June or July, 1878. The complainants themselves produced previous and subsequent accounts, but they produced no account covering the period from 1873 to 1876. Afterwards, however, there was found among the papers of the complainants that account covering the period from 1873 to 1876. Whether it was purposely kept out of sight we have no means of knowing.

And thus the evidence tsood in regard to this until it came to the rebutting testimony of the complainants, when they called to the stand General N. L. Jeffries as a witness. He was the attorney of Kilbourn and Olmstead in regard to controversies between them and Mr. Latta. It was developed in his testimony that he had written a letter to the complainants, containing various enclosures from Kilbourn and Olmstead, in relation to the business under consideration, and out of their own papers was brought General Jeffries' letter to them, dated November 26, 1877, in which he distinctly called their attention to this missing account.

It will further appear by reference to the Exhibit J. F. O. No. 25, p. 626, that the new firm of Kilburn & Olmstead charged themselves with a balance of $18,126.84, due plaintiffs by the old firm, which

firm was dissolved December, 1876. This balance was made up by adding a large balance due from the old firm to Sunderland to a small balance due to S. & H., and deducting a small balance against Hillyer. (See pp. 580, 582, 583, 587, 592-5, and Ex. J. F. O. 28, p. 627. Compare latter with Exhibit C, p. 226, and Exhibit D, p. 238. See also Exhibit F, p. 253, which is substantially a copy of Ex. J. F. O. No. 25, p. 626.)

Mr. Olmstead testified positively that (580, 581, 582, 583), on or about the 26th of November, 1877 (587), he sent to S. or H. this Exihbit C, which discloses the charge against Sunderland of $1,000.00 for commissions on the sale of the Stewart house (236), and the charge of $5,973.33 against him for care and management (238); also that he sent to one or the other of them Exhibit D (238), which discloses the charge of $16,526.67 (252) against both the plaintiffs, and also (626) the Exhibit J. F. O, 25 (which is substantially the same as Ex. F. 256), which discloses the final balance of $2,715.58 due to S. & H. upon a full and final accounting between K. & O. and S. & H. of all the business. This Exhibit J. F. O. 25 is in the handwriting of Mr. Olmstead.

The evidence of Olmstead is fully corroborated and sustained by the testimony of Mr. Jeffries. (662, 663, 664.) He identifies this account current (J. F. O. No. 25) by the "asterisk" placed thereon by him, and mentioned in the letter, dated November 26, 1877, from him to Hillyer (719). This letter was in the possession of Mr. Hillyer, and was produced by him on the examination of Jeffries (663). This Exhibit J. F. O. No. 25 was in the possession of Mr. Sunderland, and was accidently left in the office

of Mr. Olmstead by him with sundry papers, which had been written by Olmstead and others, and appertaining to this business. This evidence ought to show conclusively that S. & H. were fully advised in the latter part of 1877 as to these charges for care and management, and also of the disputed charge of $1,000.00 for commissions. This was fully three and a half years before the bill was filed. In addition to the foregoing facts, Latta fairly advised S. & H. in his letter, dated December 11, 1877, to Hillyer (108) of the amount of this balance, in which he says: "Your property is in no way affected by our controversy, *further than the* $2,700.00 *they admit they owe you;*" and also in his letter of May, 25, 1878 (110), to Hillyer, when he again alludes to this admitted balance of $2,715.00. These two letters (Exhibits J. and M.) were produced by the complainants, and filed by them as evidence. Hillyer (688) admits having received Jeffries' letter and the account. (See also 136, 357, 358, 595.)

It is thus incontestably proven not only that their testimony is entirely at fault on this subject, and that their bill is untrue, but that they had distinct notice of this charge at the date last stated; and thus it appears that, instead of being kept in ignorance in regard to this charge for care and management of this property, they had knowledge of it for three years and a half before they brought this suit, and they never disputed the correctness of it until very shortly before the suit was brought. This long acquiescence in this charge is a confession on their part of its justice, and is a confirmation of the contention of the defendants in regard to it. Hillyer, in point of fact, assented to this charge (481, 482, 577), as did

Sunderland who, acting for both, signed the receipt for the balance of $2,715.58, intending thereby to make a full and final settlement with Kilbourn and Olmstead; it seems that he did entertain ulterior notions in reference to Latta which were unfriendly; he proposed to "go for him," and hoped he (Latta) would be "mulcted in costs" (653). (See also 353, 154.) This receipt settled the suit between K. and O. and Latta. (356.)

It is useful to remember that according to the contract in reference to the care and management, as asserted by the complainants, the defendants were to rely for their compensation on prospective commissions to be realized out of the sales; which they were never permitted and which it was not possible to make. It is a somewhat remarkable feature of this case that the complainants, according to the practical workings of their own schemes as delineated by their pretensions, were not to pay anything for the services of the firm. They did not pay for services in making or settling the various purchases, although the ordinary commissions for such services would have amounted to about $17,000.00 at the usual rates. They purchased thirty-two separate pieces of property; if these had been charged for at the ordinary rates, that is to say, 5 per centum on first $2,000.00, and 2½ per centum on the balance of the purchase prices, the commissions would have been about $17,000.00, as the following schedule will show:

Schedule of property purchased by C. J. Hillyer, by Sunderland, H. & Co., and by Thomas Sunderland, showing the dates and amounts, and also the amounts of commissions at the usual rates:

C. J. HILLYER, PURCHASES.

June 18, 1871,	Square	66,	All		$25,000 00	$690 00
" 28, "	"	93,	All		39,700 00	1,057 50
May 4, 1872,	"	113,	All		15,446 00	451 15
					$80,146 00	

SUNDERLAND AND HILLYER, PURCHASES.

May 27, 1872,	Square,	156,	All	90,429 90		2,325 75
" 28, "	"	97,	Lots 1 to 25 inclusive	4,034 70		161 39
" 29, "	"	97,	" 10	1,580 25		79 01
" 30, "	"	115,	All	64,000 00		1,600 00
June 3, "	"	92,	Lots 7 and 6 to N inclusive	10,565 10		329 13
" 5, "	"	138,	" 17	8,316 00		274 90
" 8, "	"	155,	All	72,970 30		1,889 26
" 11, "	"	134,	Lots 27 to 49 inclusive	14,417 65		425 44
" 12, "	"	68,	" 2, 3, 15 and 16	6,505 84		227 64
" "	"	195,	" 11 to 25 inclusive	52,500 00		1,377 50
" "	"	151,	Except lots 1 to 16 and 20 to 26 inclusive	23,864 75		681 62
" 14, "	"	158,	West part of lot 9	2,833 50		125 09
" "	"	"	Lot 10	5,043 00		191 08
" 17, "	"	"	West 25 feet of lot 21	2,464 50		102 00
" "	"	"	Lot 3	7,232 00		245 80
" 18, "	"	92,	" 3	5,000 00		190 00
" "	"	67,	" 3, 4 and 5	6,784 00		234 60
" 19, "	"	158,	" 8	4,410 00		172 50
				$382,550 49		

THOS. SUNDERLAND, PURCHASES.

June 28, 1872,	Square	92,	Lot 2	$4,320 00		169 60
July 1, 1872,	"	69,	" 17	2,035 00		101 05
" 30, "	"	69,	" 16	2,035 00		101 05
Aug. 3, "	"	67,	" 6 (except W. 40x100) and 12, 13, 14, 15, 19	14,408 00		425 20
" 3, "	"		Stock, 200 shrs. Conn Ave. Park R. R. Co.	1,250 00		62 50
" 12, "	"	138,	All	26,500 00		727 50
Sept. 9, "	"	97,	East 33 ft. 4 in. of lot 9	798 75		39 94
Jan. 7, 1873,	"	67,	Lots 9, 10, 11, 16 and 17	13,997 10		414 92
Feb. 1, "	"	92,	" A, B, C, D, E and F	7,185 50		244 59
" 1, "	"	176,	" 1, 2, 3 and 4	3,639 65		149 19
" 14, "	"	177,	" E and F			
Apr. 30, "	"	193,	" All	48,976 80		1,288 42
				$125,143 80		

SALE.

May 19, "	"	138,	South part of	14,581 77		429 54
						$17,053 43

Mr. Sunderland directly admitted that the charge for care and management was a fair one (99), and both Hillyer and Sunderland indirectly admitted that it was so near being accurate and right that they did not care about it. (481, 482, 577, 353, 354, 653.)

It is a very significant fact that long after the dissolution of the firm of K. & L., and in the latter part of 1878, (613) the complainants made an agreement in writing with Olmstead by which they agreed to pay him a commission of ten per centum on all reductions which he might secure on special assessments against this property, being the same kind of services he had been rendering for them from 1872 to December, 1876. (556, 565.) When asked how this agreement came to be made, Sunderland gave the following account of it (653):

"There were two reasons for that, I remember now. One was, that he had charge of the property, and we thought him more familiar with the property and the taxes to be revised than any one else; and, in the next place, *they acknowledged themselves to be in debt to us twenty-seven hundred* ($2,700) *dollars which we supposed would about cover his services in the revision of the taxes. We were desirous of recovering that money, and also of giving Mr. Olmstead a chance of working it out in that way.*"

The date on this contract is written with a pencil, but it must have been after the date of the first act of Congress authorizing the Commissioners of the District to revise the assessments; this act was approved 1878. (20 Stat., .)

Mr. Latta was trustee, holding the titles to the property which was left for the defendants to deal with and care for. He would be entitled to such commissions as receivers, trustees and others, acting as officers of an equity court, or in other fiduciary capacities as are usually allowed. He never

asked for, and was never paid a cent for this, and it does not appear that the complainants ever suggested payment. Surely, these complainants who, as it appears, put so high an estimate on the value of their own services, regarded the services and accommodations of the defendants of very slight value! The rate of commissions for trustees, appointed by and in such deeds of trust prevailing in those days, was 5 per centum when a sale was made, and one-half of this percentage when an advertisement was made, but without a sale. (579, 580.) Had Latta demanded compensation in his capacity as trustee, and refused to reconvey the property except on payment of such compensation, the complainants would have been driven into an equity court for relief; an equity court would have been bound to allow Mr. Latta a fair sum for his services. This sum could not have been much less than $5,000.00 per year. (*Williams* vs. *Morgan*, 111 U. S., 684.)

The credit of the firm was much injured by the neglect or inability of the complainants to provide for maturing payments on the property. (346, 92, 93, 496–'8, 502, 522.) In 1873, after the financial crisis set in, Hillyer notified the firm that he would not be in a position to meet his share of the obligation, and proposed that the property should be sold. Sunderland also failed in his remittances, and declared his inability to send more funds. (89, 137, 178. See also letter Ex. T. S., No. 7, p. 312.)

The defendants were left to struggle with the debts of the complainants as best they could. The rightful commissions as trustee, and the labor and

credit necessary to prevent the sacrifice of this property and float Sunderland and Hillyer through this crisis was never separately charged, but was included in this charge for care and management. The firm did not even charge for negotiating the loan of $50,000.00 through Mr. Jeffries, or for sales made.

Mr. Justice WYLIE, in delivering the opinion of the court below, expressed his views on this branch of the case in the following forcible language :

"Soon after these purchases, which were made in 1872, came the business panic of 1873, which overspread the whole country, reducing the value of property everywhere. This property accordingly sank in value, and the correspondence in evidence shows that Mr. Sunderland, who was most largely interested in the property, and Mr. Hillyer, too, were almost ready to give up and lose their cash investments and let the property go rather than meet the deferred payments. At any rate, that was their intimation, and there is some evidence on that subject. Certain it is that the speculation at that time seemed to have turned in the wrong direction ; it was a losing operation. But Kilbourn & Latta kept the property. They watched it ; they paid the taxes upon it ; they took care of these deferred payments (to be sure, the complainants furnished the money), until towards the end, when it became necessary to raise a loan, I think, of $35,000, and furnish security to pay that loan. We think, for the persistence, pluck, determination, and confidence shown by these agents during those disastrous years they ought to be well compensated. If this property had been in the hands of its owners they undoubtedly, from the evidence we have, would have let it go and have lost their cash payments. But Kilbourn & Latta were always sanguine of the result ultimately, and they encouraged

these men to hold on, and took care of the property, watched the assessments, and took care of the deferred payments. Hillyer and Sunderland, the principal men, were absent in Europe a great part of the time. Stewart had sold out and had no longer any interest. We think they ought to be paid." (Addl. R., p. 9.)

But Mr. Justice WYLIE fell into an error about this charge (p. 10) by confounding the services performed for Sunderland alone with this for S. & H. These services were separately charged for and amounted to over $22,000.00.

The record contains plenty of evidence (if it is not common knowledge), to show that the "sanguine" and abiding faith of the firm, in the future of that part of the city, was not without solid foundation.

III.

From the 27th day of May, 1872, to the 19th day of June, 1872, the complainants purchased thirty-two pieces of property, and at the latter date closed their purchases. (Ex. A, p. 220.) Out of these thirty-two purchases they have selected five, and complain that in reference to them they were not fairly dealt with. They do not complain that they paid for the property more than it was worth; they do not complain that they were deceived as to the value of the property, and do not offer to reconvey it, nor do they ask to have the purchase money repaid to them. On the contrary, they seem to be perfectly content with their various bargains. But they complain that the defendants were unfaithful to this alleged dishonest contract. The tracts which give rise to their complaints are the following:

Square 115.

1. The decree appealed from was adverse to the complainants on their claim as to this square. It had been the property of a charitable institution, and in charge of Mr. George E. Baker and others, and was one of the most desirable tracts for speculative purposes in the northwestern part of the city. After a series of negotiations, extending through several years, the firm of K. & L. made an offer for the square, which was, on the 1st day of February, 1872, referred to a committee of the officers, which soon afterwards reported in favor of accepting the offer. This very square was on the books of the firm, and was advertised for sale in this real estate journal or publication as early as March, 1870, with seveal other squares afterwards bought by plaintiffs. The final consummation of the sale was delayed, because of some infirmity in the title; but these obstacles were finally removed through the labors and at the expense of the firm, and the sale was finally closed on the 25th of May, 1872, (299–304.) Thus, it will be seen, the bargain had been closed many weeks before the date fixed upon by the complainants for their alleged contract, *i. e.*, "April, 1872." (See 121, 122, 146, 149, 171, 199 to 204, 268, 302, 336 to 340, 342, 359, 374, 419, 433, 434, 436 to 451, 467–9, 470, 519, 540, 548.)

Within a day or two after the sale was made to complainants, an offer of $5,000 more than the price for which they had bought the square was made to defendants for the property. (85, 437.) While the concluding negotiations were going on with the officers of the association, Hillyer was told about this fact. (85, 337.)

A very slight examination of the testimony will satisfactorily show that the charges in the bill, as to this square at least, are a sheer fabrication and an afterthought.

SQUARE 155.

2. The claim of the plaintiffs in reference to this square was also rejected in the decree appealed from. It was bought by the defendants from Burgess, before the 7th day of June, 1872, and was on that day conveyed to Latta as trustee. At that time the firm had an existing arrangement with Mr. Eldridge to speculate in real estate, by which the latter was to furnish the money and the firm to transact the business, deduct their usual commission, and then divide the profits. This square was thus purchased for the joint benefit of the firm and Eldridge. It was offered for sale to the complainants by the firm, and they bought it at the price agreed upon, after personal inspection by themselves. There was no change made in the title, but the price was charged to the complainants, and the profits were $4,000, which sum was equally divided between Eldridge and the firm, according to the agreement. This is not disputed; the complainants called Mr. Eldridge and examined him in their behalf, but did not ask him one question about this transaction. The books of the firm show the payment to Eldridge of his share of the profits. (See 86, 121, 148, 175, 210, 423, 434, 453, 519, 572.)

SQUARE 156.

3. The plaintiff's claims as to this square were also disallowed by the court below. The history of this

item of the claim is a little curious and instructive. It was not embraced in the original bill. After the testimony had been proceeded with at considerable length, and when Mr. Olmstead was being cross-examined by the complainants in connection with the lots in square 158, and especially lot 10, the defendant Olmstead, in answer to a question, said in substance to Mr. Hillyer that he might as well claim the profits on square 156 as to be claiming them on this lot 10, or these lots in square 158. That suggestion having been made to these complainants in the manner stated, thereupon they proceeded to amend their bill, and set up the claim that now appears in this case on account of square 156;—an afterthought indicating that these complainants had been fishing about for some grievance or demand to make as against the defendants. They charge in their amended bill that they were deceived and defrauded out of a large amount of money in respect of the purchase by them of this square.

The facts about this square are these: This property had been purchased by the real estate association in October, 1871. These defendants were parties in interest in that association. The property was bought by that association for speculative purposes, and these defendants were managing it, and these complainants knew the fact.

Mr. Kilbourn testifies as follows: (340.)

Q. 135. What do you know about square 156?

A. I know that was purchased by the real estate association.

Q. 136. From whom?

A. Thomas Young.

Q. 137. For how much?

A. I think about $65,000.

Q. 138. About what date did you buy it from Thomas Young?

A. I think it was in the fall of 1871.

Q. 139. Was there a deed made by Thomas Young to anybody for the association?

A. Made to me as trustee.

Q. 140. Do you know where the deed is?

A. I do not.

Q. 141. Was it recorded about that time?

A. I do not know when it was recorded, but I suppose so.

Q. 142. That square was subsequently sold to Sunderland, Hillyer & Co.?

A. It was.

Q. 143. By whom?

A. The firm of Kilbourn & Latta.

Q. 144. Who did the business?

A. I think I consummated that sale myself.

Q. 145. To whom did you do the talking?

A. To Sunderland & Hillyer.

Q. 146. Not with Stewart?

A. I do not remember having any conversation with Stewart.

Q. 147. Did Sunderland and Hillyer know it belonged to the real estate association?

A. They did.

Q. 148. What did they know, so far as you know, about this real estate association at that time?

A. They knew that I was representing, as trustee, several parties called the real estate association, that was buying property, but they knew that that property belonged to the association. They knew what that property cost the association; they knew what profit the association made when they bought it—all about it.

Q. 149. How do you know that they were aware of the fact that the real estate association owned the property?

A. Because I told them.

Q. 150. Did you tell Hillyer?

A. Yes, sir.

Q. 151. Did you tell Sunderland?

A. Yes, sir.

Q. 152. And both together?

A. Yes, sir.

Q. 153. How long before they bought the property did you tell them that?

A. I think they knew it at the time they commenced buying the property themselves. They knew what property the real estate association owned, lying there on the Massachusetts avenue front.

Q. 154. Did you ever tell Hillyer how much you paid for it?

A. Yes, sir.

Q. 155. Did you ever tell Sunderland?

A. Yes, sir; they knew jnst as much about it as I did.

Q. 156. When did they first get the notion of buying that square—about what date?

A. I cannot tell about that.

Q. 157. Did they talk with you much about it prior to the conclusion of the bargain?

A. Yes, sir; I had most of the conversation, but Olmstead and Latta may have had some conversation,

Q. 158. They bought the property for a little over $90,000?

A. Yes, sir.

Q. 159. Of course they knew the difference if they knew the price you paid for it?

Q. 160. Did they go and look at this square 156 before they bought it?

A. They had seen it and all the property along there; I had been around there with them.

The property was bought by this real estate association at about $65,000 at the time above stated, October, 1871, and in May, 1872, the complainants purchased it at $90,000. Now they are seeking to

recover from the defendants the difference between the price the property was purchased for by the real estate association in October, 1871, and the price they paid for it in May, 1872, six months later. (86, 121, 157, 161, 166, 340, 374, 456, 460-3, 545, 552, 571, 577.)

The facts in the transaction, as we have above stated, are undisputed. There is no evidence to the contrary of this, and when the property was sold to these complainants the amount for which it was sold was credited to the account of this real estate association, and became a part of the assets of that concern. So here we have another specimen of the demands that are made against these defendants in this case, and this also characterizes this proceeding as one in which the complainants have made grave charges against the defendants without any reasonable ground upon which they can be based. To demand of the defendants that they shall pay the difference between the price for which the property was purchased by the real estate association, six months before the complainants ever dreamed of investing in Washington city property, and the price that they themselves upon their own judgment agreed to pay for it seems to us to be most extraordinary.

Lot 17, Square 158.

This is the only piece of property among all of those mentioned in the complaints of the plaintiffs, in reference to which the court below made any allowance. The decree makes an award against the defendants as to this lot of the sum of $3,316.00.

The evidence shows that Kilbourn & Latta owned lot 10 and part of 21 in this square. Complainants were desirous of procurring property in this square, and, according to the testimony of all the defendants, complainants proposed to them that they would pay fifty cents per foot for all property that could be procured in that square.

Mr. Hillyer has to say about this the following:

Q. Do you remember the circumstances connected with the purchase of square 158?

A. I only know that we thought property in that neighborhood desirable, and that we talked it over with the firm of Kilbourn & Latta, and they agreed with us, and we requested them to see what lots could be purchased, and to negotiate concerning the price.

Q. Did you know before you made this purchase that those lots which you did buy were standing in the name of Olmstead at the time?

A. I did not.

Q. Do you know it now?

A. I do not.

Q. You never stopped to inquire who the owner was, did you?

A. I did not. (128.)

In relation to this property, Mr. Sunderland testifies as follows (147):

Q. What do you know concerning the negotiation for and the purchase of lot 17, in square 158?

A. I know nothing of it personally except that we authorized its purchase from the firm of Kilbourn & Latta, and it was purchased by them, or at least it was so reported by them to us.

Q. What representations, if any, did they make concerning the price of the property?

A. In answer to that question I would say that in all cases where they made a purchase they represented to us that the sum reported to us was the lowest price at which the property could be purchased.

Q. Do you know the price paid by yourself and your associates for that lot No. 17?

A. Eight thousand three hundred and sixteen dollars.

Q. Did the firm, or either member of the firm, at any time prior to the answer of this case represent or suggest that they, or either of them, were either the owners or the holders of this property, or had any interest in these sales otherwise than as brokers?

A. They did not.

Q. Was there any such representation or suggestion made in reference to either of the other lots mentioned in square 158?

A. There was not.

On his cross-examination (174), the following occurs:

Q. Did you not instruct the firm to take all the lots in squars 158 which they could secure at 50 cents a square foot?

A. It is possible we did; but, if so, it was on their statement that it was a desirable purchase.

Q. Well, the purchase was desirable at that time, was it not?

A. I do not think so.

Q. You looked at it, did you not; you passed your own judgment on the value of the square and the desirability of the purchase?

A. I looked at the property before we purchased any part of the square.

Q. Did you pass your judgment upon it?

A. I confirmed the judgment of the firm of Kilbourn & Latta as they gave it to me.

The foregoing is what the complainants have to say in support of the averments of their bill in respect of this lot 17, and all they have to say in regard to it.

On the other hand the testimony of all the defendants, as we have above stated, is that the complainants having purchased square 156 desired to purchase 157, and offered 75 cents a foot for it, knowing that this square 157 was the property of the real estate association, in which association the defendants were interested. Defendants refused to sell them square 157. Then they undertook to purchase square 159, but were unable to secure that. Then they fell back on square 158, and offered 50 cents a foot for all of square 158 that the defendants could possibly procure for them. At that time the defendants owned lot 10 and part of 21 in square 158, and they procured from others this lot 17, as well as 8 and 9, subsequently mentioned in the bill, and to which reference will hereafter be more particularly made, and sold them to the complainants at 50 cents a foot, the price at which they had agreed to pay for it if complainants could procure it. So that by the testimony it appears that instead of the complain ants being misinformed by the defendants, instead of defendants having made fraudulent representations to them in regard to this property, the complainants procured the property for the precise sum which they themselves had fixed at which they were willing to purchase. (85, 86, 121, 128, 147, 169, 174, 185, 297, 421–3, 433–5, 451-3, 518.)

This is in entire harmony with the defendants' answer and theory in this case, to wit, that the defendants were brokers doing a general business in real estate not only for commissions, but made purchases on their own account, and that the complainants came to them in that character for the purpose of making their purchases; that the defendants gave up none of their privileges and rights as business men by virtue of any contract, or through any contract they made with the complainants, but that they dealt with the complainants precisely as they dealt with everybody else that came to them. If anybody came to them with property to sell they were at liberty to take it and sell it for the best price they could get, and if anybody came to them to buy they had a right to negotiate sales to such buyer. And in this case these complainants came to them to purchase this property, came there as buyers for this specific property and made an offer, and as they had a right to do, they sold it to them. It is precisely this kind of a case: A buyer going to a broker and making an offer for a piece of property, the broker procures the property for him at the price that he has himself fixed. It makes no difference in such case from what source the title comes; if the buyer gets it at the price he proposed, he is not defrauded.

Lots 8, one-half of 9 and 10, square 158.

5. The claim as to these lots was rejected by the court below. What was said as to lot 17 in this

square is applicable to the transactions in reference to this property, especially lots 8 and 9.

But there is this additional consideration as to these three lots, that the testimony shows that the defendants made nothing out of these lots, not even the usual commissions, and, as to lot 10, the evidence is conclusive, just as in the case of square 115, that the defendants owned this lot, which complainants knew. (See Stewart's deposition.) Defendants had made a cash payment upon it and paid one deferred payment before these complainants began their purchases.

There is no evidence on behalf of the complainants in support of their charge in the bill in respect of these three lots.

On lot 8 and this part of lot 9, they did not make even the usual commissions. Lots 10 and 21 were, at the time, owned by the firm, and Olmstead so told Hillyer. O. was at first unwilling to sell lot 10 at the price fixed by S. & H., but finally agreed to it. Part of lot 21, in this square, was also sold to S. & H., and also lot 3, in the same square. No complaint is made about the two tracts last mentioned, but why, does not appear. (See Stewart's Dep., × Q. 4, and see 86, 121, 128, 148, 168, 174, 297, 421,-2-3, 433-5, 451-3.)

Points and Authorities.

FIRST. *There is no jurisdiction in equity in this cause. There is a plain, adequate and complete remedy at law.*

The statute provides as follows:

"Suits in equity shall not be sustained in either of the Courts of the United States in any case where a plain, adequate and complete remedy may be had at law." (R. S. Sec. 723.)

Two of the judges (Wylie and James) who heard this cause below, held that there was jurisdiction in equity; but the Chief Justice dissented, he being of the opinion that the Equity Court was without jurisdiction.

If the claims of the complainants are as they aver in their pleadings, there is nothing to be done except to enforce the payment of the specific sums of money mentioned, with interest for the detention. The accounts are satisfactory; the accuracy of no one of them is disputed; the dispute is as to the rightfullness of some of the charges in the accounts. Sunderland himself swears, (165, 167, 166), that the accuracy of the accounts as rendered are unquestioned by the complainants. The suit is based on positive and accurate information as to the amounts claimed. The several charges for care and management are shown by the accounts rendered by the defendants, were produced and are relied upon by the complainants. The charges are distinct, and there is no doubt what they were made for, nor as to the amount; the only dispute is whether or not they should have been made at all, or whether they are too high. It is admitted that every cent of money furnished by the complainants was acknowledged and accounted for (136, 164, 165, 166, 561–9), by the defendants. The amounts charged to the complainants by the defendant as the cash

payments for real estate as well as the expenses, appeared upon the first account current. Exhibit A, (p. 220.) The purchase prices paid by defendants for those pieces of ground about which the contention is made, appeared upon the public land records of the District as the complainants allege in their pleadings and admit in their testimony, and they were accurate and readily accessible. Hence neither a discovery nor an accounting was required. They are satisfied with the property they acquired and the prices thereof, and there is no prayer for cancellation of deeds or reconveyances and refunding of purchase money. There is not and could not have been an averment as to multiplicity of actions at law. There is an entire absence of the ordinary badges of equitable jurisdiction. The prayers of the bill and amended bill are alike; they pray that the defendants "*may account fully* to the complainants of and concerning their said trusts," * * * and that they may "*be required by the decree of the court* to pay" the several sums of money which are precisely set out in their pleadings. The widest scope which can be given to their prayers is that they amount to a prayer for a money decree or judgment for the several sums which have been so accurately ascertained. The authorities on this subject are numerous in this court; it is deemed unnecessary to cite authorites from other courts.

Buzard vs. *Houston*, 119 U. S., 347;
Hayward vs. *Andrews*, 106 U. S., 672;
N. Y. Co. vs. *Memphis W. Co.*, 107 U. S., 205;
Sullivan vs. *R. R. Co.*, 94 U. S., 806;
Litchfield vs. *Ballow*, 114 U. S., 190;
Killian vs. *Ebbinghaus*, 110 U. S., 568.

SECOND. *There never was any such special agreement as that set forth in the bill and amendments thereto.*

It is alleged that an agreement was made between the parties "in the month of April, 1872." Sunderland says, "I think it was in May, 1872. (152.)

The evidence shows that the last purchase was made June 19, 1872, and that the first one was made May, 27, 1872. (220.) The alleged contract as to purchases actually continued 23 days. What was going on between the date of the agreement and May 27?

There was no memorandum made, either of the date or of the terms of the agreement, and neither of the three persons interested as purchasers pretends to give the date of the contract or of the persons who were present at its making. The bill describes an agreement which provides that the defendants should pay the cash payments and also the deferred payment; this latter could hardly have been attended to "within one year." They confess that they rely on various conversations for their material out of which to manufacture this queer agreement.

The defendants distinctly deny that any such, or any bargain whatever, was made with the complainants as to purchasing, and they say these men came to them as other purchasers did, and that they were treated precisely as other purchasers were, so far as these sales to them were concerned.

The alleged contract has no mutuality in it. It is one-sided. The defendants were without consideration according to the terms stated, so far as the plaintiffs were concerned. It is against reason, and

contrary to the ordinary mode of conducting business to suppose that the defendants gave to the complainants on such extraordinary terms the practical control of their equipments, and the facilities and good will of their office, which had become so valuable as to produce an income equal to $25,000 in a year. (551.) They actually had on their books for sale in behalf of their customers, 2000 or 2500 distinct tracts of ground. (535.) They practically monopolized the business.

If there was no such special agreement in fact, then the case, as to the purchasing of the lots and squares, fails. This part of the case is based wholly upon it, and the right to recover cannot exist in the absence of this alleged contract. The court below erred in holding that any part of the case based on the purchasing could be upheld outside of the alleged agreement in the then and in the present condition of the pleadings.

THIRD. *The alleged agreement as set out in the pleadings and as described in the proof is void.*

Such a contract is void because inconsistent with public policy. The two judges who entered the decree appealed from agreed that this alleged contract was void, but notwithstanding this they held, in effect, the agreement would be executed by a court of equity. This was error. A double agent of a real estate agent or broker involves inconsistent duties, and it is clear, upon both principle and authority, that in case of such double employment, the contract is void. It has been doubted whether such double agency, made even with the consent of

both buyer and seller, can be upheld on the ground of public policy. (See *Meyer* vs. *Hanchett*, 43 Wis., 246; *Rainsin* vs. *Clark*, 41 Md., 158.) That such double agencies are void when the employment is concealed from one of the principals, there can be no doubt.

Story's Agency, Sec. 9, 11, 195, 210, 241;
Ringo vs. *Binns*, 10 Pet., 269.

See, also, *Am. Law Reg.*, p. 61, January, 1876);
Rupp vs. *Sampson*, 16 Gray, 398;
Stewart vs. *Mather*, 32 Wis., 355;
Meyer vs. *Hanchett*, 39 Wis., 419;
Farnsworth vs. *Hammer*, 1 Allen, 494;
Walker vs. *Osgood*, 98 Mass., 348;
Ballman vs *Loomis*, 41 Conn., 581;
Ernhart vs. *Searle*, 71 Pa. St., 256;
Lloyd vs. *Colston*, 5 Bush., 587;
Shirlaw vs. *Monitor Iron Works*, 41 Wis., 162;
1 Lead. Cases in Equity, p. 250, and authorities there cited;
Marye vs. *Strouse*, 6 Sawyer, 204;
Michaud vs. *Girod*, 4 How., 503;
Connelly vs. *Bond*, 34 Barb., 276;
4 *Kent Com.*, 7 Ed., 475;
Bell vs. *McConnell*, 37 Ohio St., 395;
Mather vs. *R. R. Co.*, 71 Ill., 592;
Marsh vs. *R. R. Co.*, 54 Ill., 414.

The statement of this contract appearing in the deposition of Stewart, describes a contract grossly iniquitous. He says (p. 27):

"The exact terms of the agreement were, as nearly as I can recollect, that the firm of Kilbourn & Latta

was to undertake to purchase such pieces of property as we might desire to purchase, and charge a commission therefor in each case, *but in cases where the vendor sought them and in which case they were entitled to charge a commission as against the vendors, that the same should be deducted from the purchase price,*" (27).

FOURTH. *The claim is stale, and will not be entertained or enforced by a court of equity, because —*

1. *The defendants have had mutual settlements, have transferred property, and their positions were changed during the long silence on the part of the plaintiffs; and because —*

2. *The defense of the statute of limitations of three years has been interposed by the defendants,* (49, 50, 72, 73.)

The last purchase of real estate was made June 19, 1872. The bill was filed June 9, 1881, nearly nine years after the acts complained of. To avoid the defense of a stale claim, the complainants say they did not discover the alleged fraud, until recently, when they examined the deeds. These deeds were recorded on the public land records of the District of Columbia, October, 1872. They are bound by the knowledge which the records of these deeds disclosed. (See *Brant* vs. *Coal Co.*, 93 U. S., 326; *Board of Com'rs* vs. *R. R. Co.*, 18 Fed. R., 209; *S. C., Mc-. Creary; Sullivan* vs. *Portland*, 95 U. S., 806.)

The firm was dissolved December 31, 1876, and mutual settlement had been made amongst the members, money paid over, property transferred and, in fact in many respects, the positions of all the de-

fendants have been changed to such a degree as to render the defense of *laches* a most just and equitable one.

The complainant as to the charge for "care and management" is stale, and is barred by the statute.

Both Hillyer and his co-plaintiff have denied all knowledge of this charge prior to July, 1878.

They say, however, that in June, 1878, they employed Cox to bring suit against K. & O. But as hereinbefore stated, on the 26th of November, 1877, an "account stated," was forwarded with a letter from Jeffries to Hillyer, dated on that day, wherein he says: "On the 29th of August, (where I have placed the * in the account,) the amount in K. & O's. hands belonging to S. & Hillyer was some $5,200." (See Ex. N. L. J., No. 2,) (719.)

The account referred to and there enclosed, shows this *, and is Ex. J. F. O., No. 25, (626.) This account takes up the balance shown on the books of K. & L., and on previous accounts current, as being due to S. & H., (about $18,000.00), and runs down to the end where it shows a balance due of $2,715.58.

This letter of Jeffries to Hillyer, dated November 26, 1877, was produced by Hillyer on the examination of Jeffries, and the account (Ex. J. F. O., No. 25,) was found in the hands of Sunderland. This is conclusive proof that the plaintiffs received this "account stated," soon after the 26th of November, 1877; the proof shows that they kept it without complaint until in June, 1878.

Olmstead testifies that with this letter signed by Jeffries and the account current (Ex. J. F. O., 25), was also sent Exhibit C, (p. 226), and Exhibit D, (p. 238), together with certain pleadings. (580, 570,

571.) These two Exhibits were produced in Sunderlands' first deposition in the case, (145, 150), but Exhibit J. F. O., No. 25, was not then produced.

Inasmuch as this account was the only one omitted from the evidence-in-chief of the complainants, and that it is now certain that they had it in their possession as well as the letter of Jeffries (719), and the two letters (108, 110) of Latta, some explanation would seem to be necessary as to the absence of this important "account current" for so long a time. Hillyer admits that he received Jeffries' letter and the accounts. (688.)

FIFTH. *The accounts showing the disputed charges and the balance of* $2,715.58 *due the complainants having been received soon after the 26th of November*, 1877, *by the plaintiffs, and having been retained by them without objections until in June or July*, 1878, *should be held as conclusive.*

Between merchants at home, an account which has been presented, and no objection made thereto after the lapse of several posts, is treated, under ordinary circumstances, as being by acquiescence a stated account. (1 Story's, Eq. 520–526; *Wiggins* vs. *Burkham*, 10 Wall., 129; *Chappedelaine* vs. *Decheneaux*, 4 Cr., 306; *Freeland* vs. *Heron*, 7 Cr., 147; *Lockwood* vs. *Thorne*, 11 N. Y., 170.

"Where an account is received and retained, and no objection made within a reasonable time, it must be considered as settled. *Baker* vs. *Biddle*, 1 Bald., 418; *Hopkirk* vs. *Page*, 2 Marsh., 29; *White* vs. *Macon*, 3 Cr. C. C., 250. And the account need not be signed by the parties. it is enough that it shows a balance, or that there is none." *Baker* vs. *Biddle*, 1 Bald., 418; *Bainbridge* vs. *Wilcocks*, 1 Bald., 539.

The rule, that delay in objecting to an account stated will be deemed an acquiescence, applies to corporations. *Bradley* vs. *Richardson*, 2 Blatch., 354.

Where a party does not reply to a letter containing a stated account, he is deemed to acquiesce. *Smith* vs. *Kennedy*, 1 Wash. Ty,, 66.

"Where a broker's pass-book is made up of debits and credits, and a customer has had a fair opportunity to see how his account stands, the balances struck will be regarded as accounts stated; and after an apparent acquiescence the customer will not be heard to plead ignorance of the facts. *Marye* vs. *Strouse*, 6 Saw., 209.

If a merchant neglects, after a reasonable time, to object to an account rendered by his factor, showing sales at a price below that at which the factor was authorized to sell, he is deemed to acquiesce in it; and it is treated as a stated account. *Richmond Manuf'g Co.* vs. *Starks*, 4 Mason, 297; see also *Leather Mfg Bank* vs. *Morgan*, 117 U. S., 96.

SIXTH. *The plaintiffs are estopped by accepting and acquiescing in the statement of the accounts and by receiving and by receipting in full for the balance shown thereby* ($2,715.58).

After this "account stated" had been prepared, and, on the 26th of November, 1877, forwarded to the complainants, and by them retained, without objection, for nearly a year, they, on the 10th day of September, 1878, received the balance shown to be due them by that "account stated," to wit, $2,715.58, in full discharge and release of the defendants, Kil-

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MAR 5 1
JAMES. H. McKENNEY.
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1888.

Nos. 188, 261, and 262.

HALLETT KILBOURN, JAMES M. LATTA, AND JOHN F. OLMSTEAD, APPELLANTS,

vs.

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Appeals from the Supreme Court of the District of Columbia.

BRIEF FOR SUNDERLAND AND HILLYER,

APPELLEES IN NO. 188.
APPELLANTS IN NOS. 261 AND 262.

M. F. MORRIS,
Of Counsel for Complainants, Sunderland and Hillyer.

JUDD & DETWEILER, PRINTERS.

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THOMAS SUNDERLAND, APPELLANT,

vs.

HALLETT KILBOURN, JAMES M. LATTA, AND JOHN F. OLMSTEAD.

Appeals from the Supreme Court of the District of Columbia.

BRIEF FOR SUNDERLAND AND HILLYER,

APPELLEES IN NO. 188.
APPELLANTS IN NOS. 261 AND 262.

I.

STATEMENT OF CASE.

These are cross-appeals by the several parties from a decree purporting to have been rendered by the supreme court of the District of Columbia on January 22, 1885, on a bill in equity filed by Thomas Sunderland and Curtis J. Hillyer, as complainants, against Hallett Kilbourn, James M. Latta, and John F. Olmstead, as defendants, for an accounting between them in respect of certain transactions wherein the defendants had acted as agents for the complainants.

In April, 1872, the complainants, Sunderland and Hillyer, and Senator William M. Stewart, associated themselves for the purchase and sale of real estate in the northwestern part of the city of Washington, by way of investment and speculation. The defendants, Kilbourn, Latta, and Olmstead, were then carrying on business in this city as real estate agents in partnership under the firm name of Kilbourn & Latta; and they were employed as their brokers by the complainants. As claimed by the complainants, the agreement between them and their agents was to this effect: that the latter were to purchase for their principals, on the best terms obtainable, such real estate in the section mentioned as the principals might indicate; that the agents were to give to their principals the benefit of their experience, both in the way of suggestion as to the lots of ground to be purchased and in the negotiation of the desired purchases to the best advantage of their principals; that Sunderland, Hillyer, and Stewart should furnish all the money that should be needed and as they should be required to do by the agents; that they were to pay to the agents their proper commissions on their several purchases for them, except in such cases as the agents could procure the

payment of commissions by the vendors; that the property so to be purchased should be left in the hands of the defendants for resale whenever deemed expedient; that the principals should advance the necessary moneys for interest on any deferred payments that might be, and for taxes and assessments; that the agents should attend to the payment of interest, taxes, and assessments; that the agents should keep a full and accurate account of all their receipts and disbursements in the premises; that upon all resales the agents were to receive the usual commissions, and that beyond these commissions there should be no charge to their principals. The defendants claim, however, that there was no special agreement, and that each purchase was a separate and independent transaction.

Various purchases were thereupon made by the defendants for their principals aforesaid, mainly in April, May, and June, of 1872. About the end of that year Mr. Stewart sold his interest to Sunderland and withdrew from the combination. Sunderland's interest, which previously had been one-half, now became three-quarters, and Hillyer's interest remained one-quarter.

The defendants are charged with fraud in the performance of their agency, and a full accounting is sought from them. Specific allegations of breach of trust are made against them, as follows:

1st. Square No. 115, in the city of Washington, was purchased by the defendants for the complainants for the sum of $40,000, and charged to them at $65,000—an overcharge of $25,000.

2d. Lot 17, in square No. 158, was purchased for $5,000, and charged to the complainants at $8,316—an overcharge of $3,316.

3d. Square No. 155 was purchased for $67,650.75, and charged to the complainants at $72,970.30—an overcharge of $5,319.45.

4th. Lots 8 and 10 and one-half of lot 9, in square No. 158, was purchased for $9,625.80, and charged to the complainants at $12,289.50—an overcharge of $2,663.70.

5th. Square No. 156 was purchased for $65,748, and charged to the complainants at $90,429.91—an overcharge of $24,681.91.

6th. In December, 1876, the firm of Kilbourn and Latta, being about to be dissolved or having been dissolved. and having in their hands upwards of $22,500 of the money of the complainants, appropriated $16,526 of it to their own use, without any right whatever, but upon the pretense of a charge for the care and management of the property, when in fact there was no ground whatever for such a charge.

7th. About the same time—that is, in December, 1876—the defendant Latta, having in some way come into the control of the affairs of the firm of Kilbourn and Latta, appropriated $5,827.50 of the money of the complainants to his own use upon a similar unfounded pretense of a charge for care and management. A further sum of $1,085 is stated to have been similarly appropriated by him.

8th. At the same time the defendants, upon a similar pretense and equally without justification, appropriated to their own use the sum of $6,973 of the money of the complainant Sunderland.

9th. In 1878, the defendant Latta, still in control of the affairs of the firm of Kilbourn and Latta, appropriated to his own use a further sum of $1,672 belonging to the complainant Sunderland, upon the same unfounded pretense of care and management.

The property purchased was during all this time vacant property, and needed no care and management.

The fraudulent transactions in regard to the overcharges

did not become known to the complainants until 1880, and the bill in this case was filed as soon as practicable thereafter, on June 9, 1881.

The bill in the supreme court of the District of Columbia was first filed by Sunderland and Hillyer against Kilbourn and Olmstead, Latta being a resident of the State of Indiana and beyond the process of that court. But about the same time (on June 20, 1881, and June 22, 1881) two bills were filed for the same purpose against Latta in the United States circuit court in Indiana, one in the name of the complainants Sunderland and Hillyer, and the other in the name of Sunderland alone. By a stipulation, to be found on page 31 of the record, it was agreed that all these suits should be consolidated; that, for the purpose of such consolidation, the suits in Indiana should be formally dismissed, and that all the matters in controversy between the parties should be litigated in the present suit. This agreement removes an objection of multifariousness that otherwise might be made against the amended bill that was filed in this case in pursuance of this stipulation (Record, p. 34).

The complainants waived an answer under oath.

The defendants denied that they had been guilty of any fraud; denied that there was any agreement between themselves and the complainants other than the ordinary agreement between real estate brokers and their patrons, and only an agreement for each particular transaction, and asked the benefit of the statute of frauds and of the statute of limitations, and also of an account alleged to have been stated between themselves and the complainants in 1878.

Testimony was taken, and when the case came to a hearing it was certified by the special term of the supreme court of the District of Columbia to be heard in the general term of that court in the first instance. On January 6, 1885, the general term rendered a decree (filed in the clerk's office on January 9, 1885), in which the complainants were awarded, on account of the various breaches of trust complained of,

various sums, amounting in the aggregate to $28,619.77, with interest on the different items from the several dates when the breaches of trust were committed. This decree was signed by the justice who presided in the general term at the time.

The record, however, discloses the fact that what purports to be another decree of the same court, bearing date on January 22, 1885, and signed by another justice of the court, who did not preside in the court at the time, is attempted to be substituted in some way for the previous decree. There were no intervening proceedings whatever between the two decrees. It is true a petition for rehearing was filed on the same day that the second decree was rendered, January 22, 1885, but no notice of this petition was ever served on the complainants or their counsel, and the second decree itself was not rendered in pursuance of it, and does not purport to have been so rendered. In fact, there is reason to believe that the petition was not filed until after the rendition of the second decree. This second decree awards to the complainants an aggregate sum of $13,816, with interest on the several items that go to make it up from the dates of the commission of the breaches of trust for which these sums are allowed.

The record does not contain the opinion of the court. It is to be found, however, in volume 3, page 506, of Mackey's Reports of the Supreme Court of the District of Columbia. It shows that the case was decided on July 5, 1884, and that Chief Justice Cartter and Justices Wylie and James sat in the case. The first named, however, was not present at the announcement of the decision, and it appears that he dissented from the decision on the ground of want of jurisdiction of the court. Justices Wylie and James concurred in the decision. Mr. Justice Wylie, in the absence of the chief justice, presided, and he signed the decree of January 6, 1885, which is in substantial accordance with the opinion. The irregular decree of January 22, 1885, is signed by Mr. Jus-

tice James, and is not in accordance with the opinion of the court, as we find it in the volume of reports that has been cited.

An appeal was taken to this Court from the decree of January 22, 1885, first by the defendants jointly and by Latta individually, and afterwards by the complainants jointly and by Sunderland individually, and these are the appeals now before the Court.

II.

ASSIGNMENTS OF ERROR.

1. It was error in the court below to have rendered the decree or pretended decree of January 22, 1885—if it is to be regarded as a decree of the court—without notice to the complainants, and when the matter was already adjudicated.

2. The court below was without jurisdiction to render the decree or pretended decree of January 22, 1885, and such pretended decree is a nullity.

3. The court below erred, as well in the regular decree of January 6, 1885, as in the irregular and pretended decree of January 22, 1885, in not allowing to the complainants the sum of $25,000, claimed by them as an overcharge on account of the purchase of square No. 115.

4. The court below in the second decree—if such pretended decree is to be considered as the decree of the court—erred in not allowing to the complainants the sum of $5,319.55, claimed by them as an overcharge on account of square No. 155, and which is allowed to them in the first decree.

5. The court below in both decrees erred in not allowing

to the complainants the sum of $2,663.70, claimed by them as an overcharge on account of lots in square No. 158.

6. The court below in both decrees erred in not allowing to the complainants the sum of $14,601, claimed by them as an overcharge on account of square No. 156.

7. The court below erred in not allowing to the complainants the sum of $16,526, appropriated by the defendants to their own use out of the money of the complainants in December, 1876.

8. The court below erred in not allowing to the complainants the sum of $6,913.64, appropriated by the defendant Latta to his own use out of the money of the complainants in December, 1876.

9. The court below erred in not allowing to the complainant Sunderland the sum of $5,973.33, appropriated by the defendants to their own use out of the money of said Sunderland on December 12, 1876.

(NOTE.—This amount is allowed by the first decree of January 6, 1885.)

10. The court below erred in not allowing to the complainant Sunderland the sum of $1,000, appropriated by the defendants to their own use out of the money of said Sunderland on October 10, 1875.

11. The court below erred in not allowing to the complainant Sunderland the sum of $1,672.85, appropriated by the defendant Latta to his own use out of the money of the said Sunderland on July 1, 1878.

(NOTE.—This amount is allowed by the first decree of January 6, 1885.)

12. The court below erred in not rendering a decree in favor of the complainants for the whole sum of $85,365.55,

with interest on the various items thereof, as claimed by them against all the defendants, and for the sum of $6,913.64, with interest on the various items thereof, as against the defendant Latta.

III.

BRIEF OF ARGUMENT.

Two principal questions are suggested in this case:

A. Whether the decree purporting to have been rendered by the court below on January 22, 1885, and from which the several appeals here pending have been taken, is of any validity whatever in law; and

B. What amount of money, if any, are the complainants entitled to have and receive from the defendants on a proper accounting between them.

A.

The first question for the consideration of this Court is, what effect, if any, is to be given to the decree, or pretended decree, of January 22, 1885.

1.

This decree, or pretended decree, of January 22, 1885—for we cannot admit that it is entitled to be regarded as a decree of the court at all—is a most extraordinary feature of this case. A decree, regular in every respect and adjudicating all the matters in controversy, had been rendered by the court on January 6, 1885 (Record, p. 722); and an aggregate sum of $28,719.77, with interest on the several items thereof from various dates, had thereby been adjudged to be due from the defendants to the complainants. And this decree, which is in accordance with the opinion of the court,

was signed for the court by the senior associate justice who had delivered the opinion. Two weeks afterwards, whether during the same or a subsequent term does not distinctly appear, what purports to be another decree appears, without any intervening proceedings to modify or annul the first decree; and bearing the caption of a "decree in place of that of January 9, 1885," assumes to vacate and annul some previous decree of January 8, 1885, and adjudges an aggregate sum of $13,816 to be due from the defendants to the complainants, with interest on the several items that go to make up that aggregate. This decree bears date January 22, 1885 (Record, p. 725).

We have stated that there were no intervening proceedings whatever between these two decrees. In the record, however, there does appear interposed between them a petition of the defendants for a rehearing. But there is reason to believe that this petition, which purports to have been filed on the same day on which the second decree was rendered, January 22, 1885, was not actually filed until after the rendition of the second decree; for this second decree makes no reference whatever to it, and does not purport in any way to be based upon it, but to be the result exclusively of the hearing of the case at a previous term of the court. It is of no consequence, however, whether it was filed before or after the second decree, for no notice of it was ever given to the complainants or their counsel, and the record does not purport that there ever was any such notice. In the nature of things there could not have been any reasonable notice, since the filing of the petition was practically simultaneous with the rendition of the decree; and, as matter of fact, counsel here are advised that counsel in the court below had no knowledge whatever of the petition until after the rendition of the second decree. Action upon the petition, without notice to the parties to be affected thereby, would be a nullity.

Of course, we do not mean to deny the elementary rule of law, that, during the pendency of the term at which judg-

ments and decrees are rendered, those judgments and decrees are within the control of the court which rendered them, and may be vacated or modified at its discretion. But we do most emphatically deny the right of the court to set aside its judgments and decrees, after they have once been rendered, either at the same term or at any other term, *without notice to the parties to be affected by its action.* Notice is the corner-stone of our legal system. It is the primary and essential prerequisite in all cases for the exercise of jurisdiction. Without it there is no jurisdiction. That a man should have his day in court is one of the oldest principles of our law; and is an essential principle of every civilized system of law.

When a judgment or decree is rendered, the parties are entitled to regard it as a finality, and consider themselves dismissed from court. They are not required to stand guard over such judgments and decrees and to see that there is no improper interference with them. If it is sought to modify or annul such judgments or decrees, the law has prescribed the course to be pursued in such cases. In common-law cases it may be done by the old mode of *audita querela*, or by writ of error *coram nobis*, or by the more modern form of motion. In cases of equity cognizance, a petition for rehearing is the proper course. And, of course, in all cases there is the supervisory jurisdiction of an appellate tribunal in pursuance of a writ of error or appeal; but in all cases notice is essential. No one of these proceedings is an *ex parte* proceeding. An appeal will be dismissed unless there has been a citation or the appeal has been taken at the rendition of the decree, when the parties are in court. And similarly in all other cases, in which correction or review is sought, notice to the parties is required as an essential prerequisite to the exercise of jurisdiction by the court.

A petition for rehearing can have no valid or legal effect unless the parties to be affected by it have notice of its pendency; and this notice cannot be implied. It is a juris-

dictional fact, and therefore must appear affirmatively from the record.

A principle so elementary and fundamental as this can scarcely need citation of authorities in support of it, but we may, nevertheless, refer to the following cases:

Smith *vs.* Woolfolk, 115 U. S., 143.
Vallejo *vs.* Green, 16 Calif., 160.
Nuckolls *vs.* Irwin, 2 Neb., 60.
Lane *vs.* Wheless, 46 Miss., 666.
Hettrick *vs.* Wilson, 12 Ohio State, 136.

In the case cited, of Smith *vs.* Woolfolk (115 U. S., 143), this Court said: "After a decree disposing of the issues and in accordance with the prayer of a bill has been made, it is not competent for one of the parties, without a service of new process or appearance, to institute further proceedings on new issues and for new objects, although connected with the subject-matter of the original litigation, by merely giving the new proceedings the title of the original cause. If his bill begins a new litigation, the parties against whom he seeks relief are entitled to notice thereof, and without it they will not be bound; for the decree of a court rendered against a party who has not been heard, and has had no chance to be heard, is not a judicial determination of his rights and is not entitled to respect in any other court."

This was a case where, after decree rendered, one of the complainants filed a petition seeking relief against a cocomplainant in respect of some matters involved in the suit; but the principle involved is the same, and the reasoning will more strongly apply to any attempt to overthrow an existing decree without notice than it will to the effort in that case to pursue a collateral or incidental matter without notice; and it may be remarked, too, that in that case there was some kind of service of process, but not such as was authorized by law.

In the case of Vallejo *vs.* Green (16 Cal., 160) a judgment

had been set aside on motion, of which it did not appear that any notice had been given to the adverse party. The appellate tribunal promptly vacated the order setting aside the judgment and declared it to be a nullity in consequence of the want of notice.

The case of Nuckolls *vs.* Irwin (2 Nebraska Rep., 60) is precisely in point. There a judgment had been entered. The time for appeal to an appellate tribunal had elapsed. The party against whom the judgment had been entered, for the purpose of enabling him to appeal, and under the pretense (which was not sustained) that the judgment was only interlocutory, procured a second judgment to be entered without notice to the other party. On appeal the Court said:

"When a judgment is once entered of record it must stand as the judgment until it is vacated, modified, or disposed of by some means provided by law. *Entering additional judgment entries is not one of them.* A case regularly brought into court is presumed to be attended at regular terms of court by the attorneys having it in charge, and all proceedings of the court in reference to it, in the absence of fraud, will be binding on the parties whether present or not. But when judgment is entered they may cease their attention. The further proceedings in the case by petitions to vacate or modify judgment, or on error to this Court, must be on proper notice provided by statute. If to enter additional judgments in the same case is a regular proceeding, I see no necessity for notice, and when a party once obtains judgment he must ever after stand guard over it, lest some enterprising attorney should, in after years, enter another judgment so as to bring the party into an appellate court. The position will not stand."

We believe we are correct in stating the general rule of law to be that, while in a collateral proceeding there can be no successful attack upon the orders, judgments, or decrees of a court where the party has once been brought into court by proper process in the first instance, such orders, judg-

ments, or decrees can always be attacked either in the same court or upon appeal, and will be declared to be void where they have been rendered without notice, although, of course, such notice may be a general notice provided by rule of court or by law.

2.

The only rules of court bearing upon the matter of petitions for a rehearing are rules 5 and 88 of the equity rules of the supreme court of the District of Columbia, which are as follows:

"RULE 5. All motions for rules or orders or other proceedings, which are not grantable of course, or without notice, shall, unless a different day be assigned by a justice of the court, be noticed for the first day of the special term, and a copy of the affidavits or papers upon which said motion is founded shall, together with the notice of motion, be served on the opposite party, if he has appeared, or his solicitor, at least two days before the hearing of said motion, unless the grounds of said motion are matter of record; in which case it shall only be necessary to refer to such parts of the record as are specified in the notice of motion."

"RULE 88. Every petition for a rehearing shall contain the special matter or cause for which such rehearing is applied for, shall be signed by counsel, and the facts therein stated, if not apparent on the record, shall be verified by the oath of the party or by some other person. No rehearing shall be granted after the term at which the final decree of the court shall have been entered and recorded, if an appeal lies to the Supreme Court; but if no appeal lies the petition may be admitted at any time before the end of the next term of the court, in the discretion of the court."

This rule 88 is the same as rule 88 of the equity rules prescribed by this Court for the practice in equity in the circuit and district courts of the United States.

In this connection, also, may be cited the general rule of equity practice in the English court of chancery, which, under the provisions of rule 90 of the aforesaid equity rules,

incorporated into the equity rules of the supreme court of the District of Columbia as rule 89, governs in this District where there is no other specific provision. This general rule, as stated in Daniell's Chancery, page 1627, is as follows:

"The order for setting down the cause for rehearing having been passed and entered, must be served upon all the solicitors of the other parties to the suit, at least all those whose interest is affected by the appeal, in the usual way."

It will be perceived that rule 88 above cited is silent as to notice, and leaves that to be governed either by the general provisions of rule 5 or by the general equity practice as laid down by Daniell. Neither rule has been complied with in the present case. No notice is shown; and in the nature of things, it was impossible that there should have been any adequate notice, inasmuch as the petition for rehearing was filed on the same day on which the second decree was rendered.

3.

As we have already stated, the probability is that the petition for rehearing was in fact filed after the rendition of the second decree. For the second decree makes no reference to it, and does not purport in any manner to have been based upon it.

4.

We are, therefore, confronted with this dilemma: Either the second decree was a modification of the first decree upon a rehearing of the case or it was, as it purports to be, an attempt to substitute one decree for another already rendered and to annul the prior decree. In either contingency notice was required to be given to the complainants. No notice whatever was given. It is an inevitable consequence, therefore, that this second decree was grossly irregular, null and void; and, in the language of this Court in the case of

Smith *vs.* Woolfolk, above cited, is entitled to no respect whatever. Both the complainants and the defendants concur in this conclusion, although for very different reasons.

5.

If this decree of January 22, 1885, is vacated, what does there remain of the case? It is the only decree from which an appeal has been taken. There is no appeal from the decree of January 6, 1885; and it would seem, therefore, that that decree is not here for consideration, and that the merits of the case are not before the Court. If, however, the Court should be of opinion that the appeals taken, though taken in terms from the decree of January 22, 1885, have the effect of opening up the whole case, the complainants have no objection to such a construction, and are entirely willing to have the whole case considered on its merits. And with that view the further questions of law raised by the record are discussed.

B.

The second principal question involved in the case is this: What amount of money, if any, are the complainants entitled to have and receive from the defendants on a proper accounting between them? Before proceeding, however, to the consideration of this the principal question in the case, it is proper to notice some collateral questions that are raised by the pleadings, most of them of a technical character. These are five in number:

1st. Whether there is not in this case an adequate remedy at common law, so as to oust the jurisdiction of equity.

2d. Whether the contract set up in the bill of complaint is not void as against public policy.

3d. Whether the proceedings are not barred by the statute of limitations.

4th. Whether the complainants are not precluded from recovery by an alleged account stated between themselves and the defendants about three years before the institution of this suit and the alleged acceptance of that account by the complainants.

5th. Whether the bill of complaint is not objectionable for the want of proper parties, it being insisted that William M. Stewart was a necessary party.

We will notice these questions in their order as presented.

1.

The first question is, whether the complainants have not an adequate and complete remedy at common law.

It is unquestionably the doctrine of equity jurisprudence that courts of equity will not exercise jurisdiction where there is a plain, adequate, and complete remedy at common law. The provisions of the judiciary act of 1789, which is incorporated into the Revised Statutes as section 723, and which declares that "suits in equity shall not be sustained in either of the courts of the United States in any case where a plain, adequate, and complete remedy may be had at law," does not add anything to the doctrine, as this Court has declared (Boyce *vs.* Grundy, 3 Peters, 210). It merely emphasizes the principle, and it was not intended to oust the jurisdiction of equity over such matters as fraud and trust and accounting, in which that jurisdiction had been firmly established long before the adoption of the Federal Constitution.

In the case of Wylie *vs.* Coxe (15 Howard, 414–420), this Court said: "There may be a legal remedy; and yet if a more complete remedy can be had in chancery it is a sufficient ground for jurisdiction."

In the case of Harrison *vs.* Rowan (4 Wash., 202), it was said:

"In a number of cases in which the courts of common law and courts of chancery have concurrent jurisdiction the ground of equity jurisdiction is not that the common-law courts are incompetent to afford a remedy, but that such remedy is less complete than the court of equity, from its organization, is capable of affording. Cases, for example, of fraud, dower, account, and partition are clearly cognizable in common-law courts, and yet the court of chancery has always exercised a concurrent jurisdiction over them. Where a case is otherwise proper for the jurisdiction of a court of equity, it is no objection to its exercise that the party may have a remedy at common law."

This is a case of alleged fraud by parties standing in a fiduciary relation—between agents and their principals—and for an accounting between them, in which discovery also is sought. It is somewhat surprising, in view of the authorities and of the long-established jurisdiction of courts of equity in such matters, that this jurisdiction should now be questioned. The court below declared it so clear a case for the jurisdiction of a court of equity that it did not hesitate a moment in regard to the subject.

2.

The second question is, whether the contract set up in the bill of complaint is not void as against public policy, and whether, therefore, there can be any relief under it for the complainants.

The defendants denied that there was any such contract at all as that set up by the complainants; but the testimony of Mr. William M. Stewart, who, at the time of giving his testimony, had no interest whatever in the matter or in the result of the case, is amply sufficient to establish the contract. He says:

"On consultation among ourselves—Messrs. Sunderland, Hillyer, and I—we came to the conclusion that Kilbourn and Latta should be employed to negotiate the purchases which we contemplated, and accordingly we consulted with

and employed them in the business. It was distinctly understood that they should negotiate for such pieces of property as we desired to purchase from time to time and buy the same at the lowest possible price, and that they should have a commission on all purchases made by them, but that, in case the vendors should apply to them to sell, they would obtain a reduction from the purchase price of the commission which the vendors in such cases would be liable to pay, and in that case it would be the same to us as if we paid no commissions. This arrangement was made in consideration of the extensive purchases we proposed to make." (Record, p. 25.)

And again:

"The exact terms of the agreement were, as near as I can now recollect, that the firm of Kilbourn and Latta was to undertake to purchase such pieces of property as we might desire to purchase, and charge a commission therefor in each case; but in cases where the vendors sought them and in which they were entitled to charge a commission as against the vendors, that the same should be deducted from the purchase price." (Record, p. 27.)

That this was, in fact, the agreement is corroborated by all the circumstances of the cases and by the accounts kept by the defendants of their transactions.

Such being the contract between the parties, it is now charged that it was void as against public policy, inasmuch as it made it incumbent on the defendants to assume the inconsistent position of agents both for the vendors and purchasers of the property, and thereby tended to produce bad faith; and this alleged illegality is interposed as a defense to this suit.

There were upwards of forty different lots of ground purchased by the defendants for the complainants in pursuance of the agency created between them (Record, p. 614—Exhibit J. F. O. No. 13½), constituting at least fifteen distinct purchases. Only in five of these purchases is fraud specifically charged (Record, pp. 36–41), and in no one of them does

it appear that the defendants acted for the vendors as well as for the purchasers; so that, whether the contract be void or not in those cases where it involves an inconsistent position and bad faith on the part of the defendants—a question which it is unnecessary to discuss or decide—it is not void in those cases where no such impropriety or illegality is involved; for it is plainly a separable contract. Each purchase was to be a separate transaction, and the rule applies that a contract may be valid in part and void in part, valid in some things and void as to others.

This rule is thus stated in Broom's Legal Maxims, p. 741:

"It must be observed, however, that a contract, although illegal and void as to part, will not necessarily be void *in toto*. Thus, if there be a bond with condition to do several things, some of which are agreeable to law and some against the common law, the bond shall be good as to the former and void as to the latter only; and this rule is generally true with respect to a contract void and illegal in part as against public policy, and yet good as to the residue."

This rule has been repeatedly affirmed by this Court.

Gelpcke *vs.* Dubuque, 1 Wallace, 220.
United States *vs.* Hodson, 10 Wallace, 395.

But there is another and very conclusive answer to this objection of the defendants. The complainants are not seeking specific performance of any contract, legal or illegal. They seek an accounting between themselves and the defendants; and it is well settled that an accounting may be had, even for the proceeds of an illegal contract, when such contract has been executed and there is no longer question of its enforcement, but of the ownership of the proceeds of it.

Planters' Bank *vs.* Union Bank, 16 Wallace, 483.
McBlair *vs.* Gibbs, 17 Howard, 232.
Armstrong *vs.* Toler, 11 Wheaton, 258.

Even if the special contract set up by the complainants

were null and void, or if, as claimed by the defendants, no such contract ever existed, it is conceded that the relation of principal and agent existed between the parties. That relation is set forth in the bill independently of the special contract; and there is a prayer for general relief based upon it. In respect of this relation an accounting is eminently proper.

Plainly, therefore, this second objection interposed by the defendants is untenable.

3.

The third objection is the bar of the statute of limitations. This it is sought to apply mainly, if not exclusively, to the charges for services made by the defendants in 1876 and 1878 in an alleged settlement between themselves and the complainants.

The frauds in regard to the overcharges for the several purchases made by the defendants for the complainants were not discovered by the latter until February, 1881 (Record, p. 147), and this suit was begun within a reasonable time thereafter, in March, 1882.

It is objected that the complainants might have discovered some at least of these frauds by consulting the land records of the District of Columbia; that these records disclosed the amounts for which the defendants purchased and the amounts for which they sold the several pieces of property to the complainants. This statement is not entirely correct. But even if it were true, in point of fact, that the land records afforded the data for the discovery of all these frauds, these records did not give notice to the complainants. They had no reason to consult them; and it is well settled that such constructive notice as is afforded by records of this character affects only those who have occasion, in the ordinary course of business, to consult them in dealing with the property which they concern.

Patterson *vs.* De la Ronde, 8 Wallace, 292.

Here the defendants were the agents of the complainants, not only for the purchase of the property, but likewise for the necessary conveyancing (Record, pp. 26, 166). The titles were all made to Latta (Record, p. 122), and the deeds were for a long time kept by him from the records (Record, p. 211), and were retained in his own possession. The complainants relied, and were entitled to rely, upon the defendants for the whole transactions. Moreover, during most of the time from 1872 to 1881 the complainants were out of the District of Columbia, and during a great part of the time out of the United States.

No serious reliance seems to be placed on the statute of limitations in this connection. It is more strenuously insisted on with reference to the charges for services made by the defendants in 1876 and 1878. The facts in regard to these charges, as disclosed by the record, are as follows:

The firm of Kilbourn & Latta was dissolved on December 31, 1876, by the withdrawal of Latta. At the time of the dissolution they had in their hands about $30,000 of the money of the complainants (Record, pp. 238, 252, 304). In anticipation of the dissolution, and without any notice whatever to the complainants (Record, pp. 308, 309), on the 12th of December, 1876, they divided $22,500 of this money between themselves, charging $16,526.67 of it to the account of the complainants jointly and $5,973.33 to the account of Sunderland individually (Record, pp. 252, 238—Exhibits D and C). The pretense of this charge was the alleged care and management of the property, which was vacant and unimproved property, at the rate of $5,000 a year for four years and a half, June 12, 1872, to December 12, 1876.

While it is claimed that, in 1873, there was some conversation between the complainants and defendants or some of them in reference to compensation for services by the defendants for care and management (Record, pp. 89, 90), it is not claimed or pretended that there was any agreement whatever between the parties for any such compensation, or

any compensation whatever other than such as would result to the defendants from having the property left in their hands for sale. The statements of account set forth in Exhibits C and D, above mentioned, were not rendered to the complainants until June or July, 1878 (Record, p. 150).

On the dissolution of the firm of Kilbourn and Latta, two of the partners, Kilbourn and Olmstead, formed a new firm, under their joint names, for the continuation of the same business; and they continued to act in some matters as agents for the complainants; and Latta, upon whom seems to have mainly devolved the settlement of the affairs of the firm of Kilbourn and Latta, likewise continued to claim or have some management of the business of the complainants (Record, p. 313, ——).

The settlement of the affairs of the firm of Kilbourn & Latta resulted in litigation. Kilbourn and Olmstead sued Latta in the supreme court of the District of Columbia; and the case is referred to in these proceedings as No. 5919, equity (Record, p. 702). It is sought to be shown that, in connection with this suit, notice of it and a copy of an account between the complainants and the firm of Kilbourn & Olmstead were sent by the attorney of Kilbourn & Olmstead to the complainant Hillyer on November 26, 1877 (Record, p. 719); that this account (Record, p. 626—Exhibit J. F. O. No. 25) commenced with a balance brought over from the account of Kilbourn and Latta and assumed by the firm of Kilbourn & Olmstead; that this account bore date on November 1, 1877, and showed on that day a balance due to the complainants from the defendants, Kilbourn and Olmstead, amounting to $2,715.58; that Kilbourn and Olmstead paid this sum to the complainants and took their receipt for it on September 10, 1878 (Record, p. 613); that this receipt professed to be an account of the firm of Kilbourn & Latta; that the account (Exhibit J. F. O. No. 25), to which reference has been made, must have also come into Sunderland's hands as well as Hillyer's, because Olmstead testifies

that he found it in a package of papers accidentally left at his (Olmstead's) office by Sunderland and deliberately abstracted it from the package—some time after June 22, 1878 (Record, pp. 582, 583, 593, 594); and that this statement of account was more than three years before the commencement of this suit, and therefore the claim of the complainants in the premises did not accrue within the period of limitations.

On the other hand, it appears that no full and complete statement of the accounts between the complainants and the defendants was ever furnished by the defendants or any of them to the complainants until June 22, 1878 (Record, pp. 150, 124, 98, 583, 594); that then, for the first time, the complainants were advised that a charge had been made against them for alleged services, and that they promptly repudiated the account and any and all liability for any such alleged service.

Upon this statement it is plain that if the statute of limitations ever began to run at all it did not begin to run until September 10, 1878, the date of the receipt, when, if at all, the statement was accepted by the complainants.

But the purposes for which this alleged statement of accounts was given and the circumstances under which the receipt of September 10, 1878, was executed preclude their being used for the purpose of barring the claim of the complainants under the statute of limitations. They were intended merely for the purpose of the litigation then begun between Kilbourn and Olmstead on the one side and Latta on the other. The statement was intended only to show the condition of things between these parties, and the receipt was given under peculiar circumstances to be used in that litigation and with the distinct and positive understanding that it was not in any manner to affect the controversy in regard to charges for services (Record, pp. 660, 719). To give these documents any other efficacy now would be an additional fraud upon the complainants.

4.

The fourth question is whether the rendition of the account, the acceptance of the money, and the execution of the receipt, which have been mentioned, do not operate as a settlement in full between the complainants and the defendants and as a bar to the maintenance of this suit.

The same considerations which prevent these circumstances from operating as a bar to the suit under the statute of limitations operate with still greater force to preclude them from being regarded as a statement of accounts and final settlement between the parties. It is conclusively shown by the testimony of Mr. N. L. Jeffries, who was the attorney for Kilbourn and Olmstead in their litigation with Latta, that at the time the receipt in question was given (September 10, 1878 (Record, p. 613), the controversy between the complainants and defendants in regard to the matter of charges was still open and unsettled, and that it was not to be affected in any manner by the receipt (Record, pp. 659–660); and there is no pretense that there was any settlement after the date of the receipt. This objection, therefore, of a settlement between the parties is wholly untenable.

5.

The fifth and last objection raised by the defendants is the alleged want of proper parties to the suit. It is claimed by them that Senator William M. Stewart, having been one of the original parties to the combination, is a necessary party to these proceedings.

As already stated, Stewart had entered into the combination with Sunderland and Hillyer for the speculation proposed by them. He withdrew, however, in December, 1872, and disposed of all his interest to Sunderland, who, with the knowledge and consent of the defendants, was substituted in Stewart's place in the same manner and to the same extent as though he had been the original purchaser of the interest

instead of Stewart (Record, pp. 26, 714). Stewart executed and delivered to Sunderland a bill of sale of the interest so transferred to the latter (Record, pp. 714, 656), which was a mere memorandum of the transaction, and does not appear in the record.

In order, however, more fully to meet this objection, interposed by the defendants, Sunderland procured from Stewart, during the pendency of this suit, on October 31, 1882, a more formal assignment of all Stewart's right, title, and interest in the premises and of all rights and causes of action growing out of the transaction, and in this paper Stewart authorized the attorney of the complainants to appear for him and file a disclaimer of all interest in the premises (Record, p. 714). The attorney for the complainants did accordingly enter his appearance for Stewart and filed a disclaimer for him on November 1, 1883, while the suit was pending in the lower court (Record, p. 721).

Assuredly this ought to end all controversy in reference to the necessity of making Mr. Stewart a party to the suit.

It will be remembered, of course, that neither Mr. Stewart nor any of the complainants had any *estate* vested in him, either legal or equitable, which required the formality of a deed of conveyance for its transfer. The titles were all in Latta, and there was not even an equitable estate in Stewart or the complainants. There was only an equitable right or interest, which required no more than a mere memorandum in writing, if even that much, for its transfer.

6.

It is proper here to notice, what has already been suggested, that no objection of multifariousness is made to the bill. The suit is a combination and consolidation of three several suits in pursuance of express agreement and stipulation between the parties (Record p. 31); and it is desired by all the parties that, as all the controversies between them

have grown out of the same transactions and the testimony would be the same for all, they should all be litigated and determined in this one proceeding. This is not the case of an attempt by agreement to give the court jurisdiction where none exists, but simply the consolidation in one suit of three several controversies for which otherwise three several suits by bills in equity would have to be instituted, and which in fact had been instituted.

This, it is believed, disposes of all the technical questions and technical objections raised in the case. And we now proceed briefly to discuss the case upon its merits. A fuller brief, dealing with the merits of the case in somewhat greater detail, is filed herewith by one of the counsel for the complainants; and consequently we content ourselves here with a very brief statement of the facts with reference to this branch of the case.

7.

Five several purchases and *four* misappropriations of money are specifically charged as involving breaches of trust on the part of the defendants.

1st. *As to square No.* 115.—The defendants purchased this square for $40,000, and charged it to the complainants at $65,000—an overcharge of $25,000, for which the complainants claim credit.

The court below, in both decrees, refused to allow this credit to the complainants, on the ground that the complainants were willing to pay $65,000 for the property, if they could get it for no less; that the defendants had been in negotiation, before the complainants came to them, for the purchase of the property for themselves for $40,000; and that, although this negotiation was not consummated until after the employment of the defendants by the complainants, there was nothing unfair in the transaction, and the defend-

ants were not required to disclose to the complainants their own interest in the premises.

This position is entirely untenable in law and unsupported by the facts. It is not true that the defendants ever purchased this property for themselves. Unfortunately for the defendants, while in this suit they make common cause with each other, their statements are not reconcilable with the statements made by them on occasions when they had no purpose to antagonize any claim of the complainants. In their litigation between themselves they do not hesitate to accuse each other of inveracity (Record, pp. 704, 706); and while we are not here called upon to decide whether either or any of them is reliable, we are certainly justified in taking their admissions in regard to their transactions with the complainants as satisfactory testimony of the character of those transactions.

From page 702 to page 710 of the record, both inclusive, there is an extract from the testimony of Latta in his suit with Kilbourn and Olmstead, No. 5919 on the equity docket of the supreme court of the District of Columbia, on which the complainants might safely rest their whole case. We cite some of this testimony:

Q. Had the firm (of Kilbourn and Latta) any resources from which to get money except its commissions?

A. None, I believe, unless the individual members of the firm put the money up, *which they never did in any case* (p. 703).

* * * * * * *

Q. How many purchases were made by the firm, if any were made, without knowing just what you were going to do with the property and how you would get rid of it?

A. *There were seven during the existence of the firm that were made for what you might call investment; all the others we knew just where we were going to put them before we bought.*

Q. Do you remember what cash payments were made on those seven pieces?

A. $4,774. These are the purchases made from 13th of June, 1871, to June 7, 1874. (Record, p. 705.)

* * * * * * *

Q. Can you not approximate the aggregate of the amount purchased?

A. Without being able to state definitely, I should think that it was about $14,000 that they purchased for themselves.

Q. You now allude, I presume, to purchases made by them, at the time of the purchase not having any particular disposition of the property in view, do you not?

A. Yes. (Record, p. 707.)

* * * * * *

Q. In stating, in answer to the 95th question of your direct examination, that the firm had no capital at that time with which to make purchases, do you mean that the firm had not the means of making purchases if it had desired to?

A. Yes, sir; I do.

Q. Look on pages 16 and 17 of Mr. Olmstead's deposition in this cause and state whether that is a copy of a letter written by you on the 26th of May, 1872, from Altoona.

A. Yes, sir; I think it is.

Q. In that letter you recommend the advisability of large purchases by the firm for its own benefit. How were those purchases to be made if the firm hadn't the means of making them?

A. With the view of turning them over to Sunderland and Hillyer, knowing that that was one of the squares that they were talking about purchasing. (Record, p. 706.)

* * * * * *

Q. In the list given by you, in answer to the 119th question, as to when the Sunderland and Hillyer property was acquired and when conveyances were made to Sunderland and Hillyer, I cannot understand clearly from your testimony whether in that list you mean to include property which was purchased by the firm for Sunderland and Hillyer and not for the benefit of the firm or of the individual members comprising the firm. How is that?

A. The firm took a profit on it, although it was property designated by Sunderland and Hillyer for us to purchase at a certain price. We purchased it at a less price and took the difference as profits, but in every instance it was property which we were authorized to purchase for them at a price beyond what we paid.

Q. Then, as I understand it, this was property which you had been authorized to purchase by Sunderland and Hill-

yer, for which you were at liberty to go to a certain figure, and, in point of fact, purchased the property at a less price and conveyed it to them at the figure designated by them? Is that it?

A. Exactly.

Q. Whose money was used in making these purchases?

A. Generally, Sunderland and Hillyer's. (Record, p. 709.)

* * * * * *

The seven pieces of property purchased by the firm of Kilbourn & Latta for its own benefit as a speculation, to which reference is made in the foregoing testimony, is identified elsewhere in the Record (p. 606); and they do not comprise any part of the property bought for Sunderland and Hillyer and for which complaint is made in this suit.

So, by the confession of the defendant Latta, it appears that square 115 was one of the pieces of property designated by the complainants to the defendants to be purchased for them at a price not exceeding a certain designated figure; that the defendants purchased the square, with the money of the complainants, at a less figure and took the title to themselves or to Kilbourn, and that then they conveyed to the complainants at the extreme figure specified by the latter. If this be equity and justice, it would be difficult to imagine a case in which a real estate agent might not defraud his principal according to law. Even without any special agreement or any relation of principal and agent, there would be here a resulting trust, inasmuch as the property in question was purchased with the money of the complainants.

It is no defense that the defendants were in negotiation some time before for the purchase of this property (Record, p. 336). Sunderland and Hillyer were their customers long before the date of the combination in April, 1872 (Record, 413); and, according to the testimony of Latta, it was purchased on account of Sunderland and Hillyer. The negotiations came to nothing. The defendants had no money

wherewith to consummate them, and it was only when the complainants had designated them for purchase and had placed the money for the purchase in the hands of the defendants that the latter devised, in a scheme for the revival of the former abortive negotiations, a plan to make $25,000 for themselves out of the transaction. It would be an outrage on justice to sanction such a transaction.

2. *As to lot No.* 17, *in square No.* 158.—This property belonged to Governor Morgan, of New York. The complainants directed the defendants to purchase it for them at a sum not to exceed $8,316. The defendants succeeded in purchasing it for $5,000, and yet they deliberately charged it to the complainants at the extreme figure given. The testimony of John Bull, the book-keeper of the defendants, by which this transaction is shown (Record, pp. 186, 187), develops the astonishing manner in which the defendants conducted their business. The fraud in this case was so flagrant that, in both decrees of the court below, the illegal excess of $3,316 was allowed against the defendants; and, of course, the allowance was right and proper.

3d. *As to square No.* 155.—This square was purchased by the defendants for the complainants for $67,650.65 (Record, p. 210), and charged to the latter at $72,970.30 (Record, p. 614, Exhibit J. F. O. No. 13½), a clear, palpable case of overcharge without explanation or extenuating circumstances. The overcharge of $5,319.65 was allowed by the court below in the first decree. Why it was omitted from the second or irregular decree we are utterly at a loss to conjecture.

4th. *As to lots* 8, 10, *and* ½ *of* 9, *in square No.* 158.—These lots were purchased for the complainants for the aggregate sum of $9,625.80 (Record, p. 606), and were transferred to them at the sum of $12,289.50 (Record, p. 614, Exhibit J. F. O. No. 13½), a clear overcharge of $2,663.70. The defend-

ants claim that they bought these lots for themselves; that they disclosed the ownership to Sunderland and Hillyer, and that they did not deal with them here as agents (Record, p. 86). But this statement, which depends on the testimony of Latta alone, is entirely disproved by Latta's admissions already cited, and by the books of Kilbourn and Latta, offered in evidence by or through Olmstead (Record, p. 606), which show that the lots in question were not purchased by the defendants until after the order to them by Sunderland and Hillyer to purchase. Here, then, is an overcharge of $2,663.70 which was not allowed in either decree of the court below.

5th. *As to square No.* 156.—This seems to have been the first purchase made by the defendants for the complainants. While the transaction is rather complicated, there are some salient facts from which the truth can readily be evolved.

The cash payment on account of it was $20,046.14 (Record, p. 224). The amount of the incumbrances on it was $53,405.76 (Record, p. 614, Exhibit J. F. O. No. 13½), not $57,000, as stated, apparently by a clerical error, in aggregating the several sums in this exhibit. The whole purchase-money, therefore, was $73,449.90, and yet it is charged to the complainants at $90,429.96 (Record, p. 614, Exhibit J. F. O. No. 13½)—an overcharge of $16,980.06, which the complainants are entitled to be allowed.

The transaction, as detailed by Mr. Olmstead in his testimony and by the books of the firm, would indicate a much larger sum—$24,681.96—to which the complainants seem to be entitled on account of this square; but they do not care to investigate it beyond the accounts as already developed.

In neither of the decrees of the court below was there any allowance to the complainants on account of this square, and they are certainly entitled to the allowance claimed by them.

It is very apparent that in these five several purchases the complainants have been defrauded to the aggregate amount

of $53,279.41, exclusive of interest. Of this sum only $8,635.65 were allowed by the first decree of the court below, and only $3,310 by the second decree.

Now, as to the charges made by the defendants for the care and management of the property of the complainants and their deliberate appropriation of the money of the complainants in their hands to the payment of these pretended charges, mention has already been made to some extent of the grounds of this claim.

A large part of the testimony is devoted to this matter; but it will not be necessary to peruse it all in order to attain a just idea of the merits of the controversy upon this point. There are some conceded facts, or facts easily ascertainable, upon which a just conclusion may be based.

In the first place, it is conceded that there was no express contract or agreement of any kind for any such compensation to the defendants. In the second place, it is conceded that the property in question was all vacant unimproved property, which, in the nature of things, required no care or management. Consequently no charge for such care or management, either by express contract or by implication, could have been contemplated by the complainants, or can now be entertained against them, without positive proof of service rendered and the propriety and necessity of such service. This much, at all events, is clear.

Now, when the testimony is sifted, it is found that only three matters appear which are of the character of service rendered. These are: 1st. Attention to the payment of taxes and assessments (Record, p. 490); 2d. Attention to the revision of some special assessments (Record, pp. 487, 613); 3d. Services in the extension of a certain loan or mortgage on part of the property (Record, p. 149). But this last was paid for specially (Record, 149), and the second matter was the subject of special contract between Sunderland and Olmstead long after the date of the spoliation in contro-

versy (Record, pp. 487, 613). And so the only service shown to have been rendered and for which the defendants sought to compensate themselves by the wholesale appropriation of the money of the complainants is the payment by the defendants of the bills for taxes and assessments on the property of the complainants in their hands for sale out of the money furnished to them by the complainants for the purpose. This service consisted merely in drawing checks and sending them to the collector of taxes, and the whole service during the whole four years and a half for which compensation is charged probably required about one-half an hour in the aggregate; and for this service, for which, as Mr. Thos. J. Fisher and others testify, it is not the custom of real estate agents to charge at all when the property is in their hands for sale (Record, p. 681), these defendants charge at the rate of $5,000 a year—a sum equal to the annual salary of a Senator of the United States. The mere statement of this fact is sufficient to brand this transaction with its true character.

Plainly, therefore, the complainants are entitled to recover back the sum of $22,500, appropriated to themselves by the defendants on December 12, 1876.

The court below, in the first decree, allowed the defendants one-half of their appropriation and required them to refund the other half. The irregular decree of January 22, 1885, cuts down the amount to be refunded to some extent, but upon what principle it bases this conclusion it is absolutely impossible to ascertain.

8.

Besides these two appropriations of money on December 12, 1876, by the defendants jointly, the defendant Latta, during his term of control of the property after the dissolution of the firm of Kilbourn and Latta (December 31, 1876), appropriated several sums to his own use and never accounted for them.

1st. On December 30, 1877, upon the same unfounded pretenses of charge and management, he transferred to himself the sum of $3,885 of the money of the complainants. On June 20, 1878, he similarly transferred to his own use, without any right, the sum of $1,792.85 (Record, pp. 255, 256—Exhibit E). The whole sum so appropriated was $5,677.85, which he ought to refund.

The court below in its first decree allowed Latta to retain one-half and gave a decree against him for the other half ($2,838.92). The irregular decree of January 22, 1885, required him to refund only $2,500.

2d. In the account of complainant Sunderland with Kilbourn and Latta, from June 17, 1872, to December 30, 1876 (Record, pp. 226 to 238—Exhibit C), is a charge against Sunderland of $1,000 as commissions for the sale of a house belonging to Senator Stewart. Sunderland had nothing whatever to do with this house, and why he should be charged with this commission is a mystery (Record, pp. 649, 650, 588). It is plain that he is entitled to credit for this amount, and this credit he has not been allowed in either decree by the court below.

3d. In the final accounts furnished by Mr. Latta (Exhibits E and L, Record, pp. 253–256, 261, 262) the account of Sunderland and Hillyer shows a balance of $5,480.93 in their favor, and that of Sunderland individually shows a balance of $4,245.16 against him. It is proper that the one should be set off against the other. This leaves an admitted balance of $1,235.79 due from Latta to Sunderland, which is not contested by any one. The court, in its first decree, allowed it, but it disappears from the irregular decree of January 22, 1885.

4th. In the account between Latta and Sunderland, designated as Exhibit L, above mentioned (Record, pp. 261, 262),

the now stereotyped but talismanic mode of exhausting the funds of the complainants in the way of a charge for care and management again appears. An item to that effect, amounting to $1,115, is entered as of the date of December 30, 1877, and another item of $557.50 is entered as of the date of June 20, 1878. These two items, amounting to $1,672.50, are even more unjustifiable than those to which we have heretofore referred, for there is here absolutely no proof whatever, or even pretense of proof, of any care or management. This sum was allowed to the complainants in the first decree of the court below. The incomprehensible second decree omitted it.

C.

We append hereto a summary of the two decrees of the court below and a suggestion of what a proper decree should be in view of the proceedings in the case.

It is submitted that the complainants are entitled to a decree for the aggregate sum of $85,365.55, exclusive of interest, on the several items that constitute this sum from the several dates of appropriation by the defendants.

M. F. Morris,

Of Counsel for Complainants, Sunderland and Hillyer.

APPENDIX.

Summary of Decree of January 6, 1885.

It awards to Sunderland and Hillyer as against Kilbourn, Latta, and Olmstead as follows:

$5,319.55, for square 155, and interest from June 7, 1872.
$3,316.00, for square 158, and interest from June 8, 1872.
$8,263.33, overcharge for services, and interest from December 12, 1876.

It awards to Sunderland as against Kilbourn, Latta, and Olmstead as follows:

$5,973.33, overcharge for services, and interest from December 12, 1876.

It awards to Sunderland and Hillyer as against Latta alone:

$2,838.92, overcharge for services, and interest from July 1, 1878.
$1,235.79, balance of accounts, and interest from July 1, 1878.

It awards to Sunderland as against Latta individually:

$1,672.85, overcharge for services, and interest from July 1, 1878.
Total, $28,619.77, besides interest.

Summary of Decree of January 22, 1885.

It awards to Sunderland and Hillyer as against all the defendants, Kilbourn, Latta, and Olmstead, as follows:

$3,316.00, for square 158, and interest from May 31, 1872.
$8,000.00, excess for services, and interest from December 12, 1872.

It awards to Sunderland and Hillyer as against Latta, individually, as follows:

$2,500, excess for services, and interest from July 1, 1878.
Total, $13,816, besides interest.

PROPER DECREE.

SUNDERLAND and HILLYER
vs.
KILBOURN, LATTA, and OLMSTEAD.

$25,000.00, for square 115, and interest from May 25, 1872.
$3,316.00, for square 158, lot 17, and interest from June 8, 1872.
$5,319.65, for square 155, and interest from June 7, 1872.
$2,663.70, for square 158, lots 8, 10, and ½ of 9, and interest from June 14, 1872.
$16,980.06, for square 156, and interest from May 17, 1872.
$16,526.67, for services, excess, and interest from December 12, 1876.

SUNDERLAND *vs.* KILBOURN, LATTA, and OLMSTEAD.

$5,973.33, services, excess, and interest from December 12, 1876.

SUNDERLAND *vs.* LATTA.

$5,677.85, services, excess, and interest from July 1, 1878.
$1,000.00, Stewart commissions, and interest from July 1, 1878.
$1,235.79, balance of account, and interest from July 1, 1878.
$1,672.50, services, excess, and interest from July 1, 1878.
Total, $85,365.55, besides interest.

Office Supreme Court U. S.
FILED.
MAR 5 1889
JAMES. H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

SUNDERLAND AND HILLYER

vs.

KILBOURN, LATTA AND OLMSTEAD.

Nos. 188, 261, 262.

October Term, 1888.

ARGUMENT FOR COMPLAINANTS.

J. H. RALSTON,
For Complainants.

Ramsey & Bisbee, Prs.

IN THE

Supreme Court of the United States.

SUNDERLAND AND HILLYER

vs.

KILBOURN, LATTA AND OLMSTEAD.

Nos. 188, 261, 262.

ARGUMENT FOR COMPLAINANTS.

There are few, if any, doubtful legal questions in this case. Upon the issues of fact there is a direct conflict of testimony. This conflict is of such character as to compel the conclusion that the plaintiffs or the defendants have knowingly stated that which is not true. It will be the disagreeable but unavoidable duty of the court to determine which of them is entitled to credence. To do this will require not only a careful examination of the several statements, as to their consistency and inherent probability, but also a careful comparison of these statements with the uncontroverted facts surrounding the several transactions. The necessity of thoroughly sifting the several statements, and placing before the court enough of surrounding facts to make clear the truth or falsity of these conflicting assertions, has made the record unusually voluminous, and the same consideration seems to require a discussion more in detail and at greater length than would otherwise be justifiable.

The bill states several causes of action, based upon distinct transactions, which may be divided into two classes: First. Illegal appropriation by the defendants of the funds of the plaintiffs under pretext of charges for the care and management of their property, from 1872 to 1878. Second. Frauds committed by the defendants, while acting as agents for the plaintiffs, in purchases of several parcels of property in 1872. I will consider these two classes separately, and first—

I.

CARE AND MANAGEMENT.

The complainants purchased, through the firm of Kilbourn & Latta, real estate brokers, in 1872 and 1873, a large amount of unimproved real estate in the northwestern section of the city of Washington. The property was purchased on speculation, and was shortly after its purchase left in the hands of said firm for resale whenever a satisfactory profit could be realized. For convenience, in case of sales being made, the title was placed in defendant James M. Latta, trustee. The property, except such small portions as were sold, remained in the hands of this firm until July, 1878, when upon the discovery by complainants of the facts hereinafter stated, its control was taken from them and given to other agents.

On the 12th of December, 1876, the firm of Kilbourn & Latta took from funds in their hands belonging to complainants $22,500 and appropriated it to their own use. The pretext for this was an entry made at that time on their books charging to complainants jointly $16,526.67, and to complainant Sunderland individually $5,973.33 for alleged "care and management" of property belonging to complainants. In July, 1878, the defendant Latta, upon a like pretext, took from funds of complainants then in his hands the sum of $7,350.35 and appropriated it to his own use, making the total amount thus taken from complainants $29,850.35. The complainants aver that there was no authority or justification whatever for the making of these charges or the taking of this money. They say that from a short time after its purchase to the 1st of January, 1877, this property was in the hands of the firm as brokers for sale on commission, and that during that period the only services rendered by defendants consisted in the receipt and disbursement of money placed in their hands for payment of interest, taxes and deferred payments, and the keeping of an account of the same, and that these services were performed by defendants as incident to their business as brokers and in consideration of the advantages of having the property left in their hands for sale with the opportunity to realize commission on such sales. They say that these services were of trifling value, involving no outlay of money—no responsibility, pecuniary or otherwise; that they consisted of mere clerical labor, and were such as are ordinarily performed without charge by brokers having property in their hands for sale. They also say these services were far overbalanced in value by the opportunity thus afforded for realizing commissions, and that there was a well understood, implied agreement that they were to be performed without other compensation. They deny that except in this manner, and to the extent above stated, the defendants were ever employed or requested

to perform, or did in fact perform, any services or exercise any care or management in respect to the property, or that the character and situation of the property was such as to make any other services needful or desirable.

The defendants, on the other hand, assert in their answer that during the period above named they performed a great variety of services of great value to the complainants, involving a large amount of time and labor, wherein they incurred great responsibility and suffered great pecuniary detriment in loss of credit and otherwise.

It is my purpose to show from the evidence not only that these statements are untrue, but that they are so utterly devoid of all foundation in fact as to compel the conclusion that they are deliberate misstatements.

FIRST—ORIGIN OF THE ALLEGED AGREEMENT.

If the complainants became obligated to pay the amounts charged to and taken from them by defendants it was because of some contract, expressed or implied, creating the obligation. Kilbourn and Olmstead in their answers say that no express agreement of any character was ever made in respect to these services. They rest their justification solely upon an implied agreement, obligating plaintiffs to pay for them what they were reasonably worth. I shall hereafter notice what Mr. Latta says upon the subject, but in what I have to say at present shall accept the position of Kilbourn and Olmstead as that of all the defendants. The taking of the money being admitted, the burden of proof of an implied contract authorizing it to be taken is upon the defendants. It is for them to show when, where and how the obligation originated, as well as its scope and extent. It is for them to show the character of the services rendered, their value, and that they were rendered upon a previous request of the complainants, or under such circumstances, as to benefit and acceptance, that a previous request may be implied. The defendants do not rely upon the clerical services, receiving and disbursing money, keeping accounts, &c., above specified, as a basis for this charge. They have not even attempted to prove the value of these services. What they aver and what they must prove is the performance of services distinct from these—in *caring for and managing* the property of complainants.

The first entry made on their books in any way referring to these services is of date December 12, 1876, and reads as follows:

For management, care, &c., of the property from May, 1872, to date, at the rate of $5,000 per annum on the whole property of Sunderland and Hillyer and Thomas Sunderland, $16,526.67.

On the same day a charge in the same form was made against Sunderland individually for $5,973.33. The two accounts aggregate $22,500. The period charged for is, therefore, four and one-half years,

commencing June 12, 1872. By looking at the account rendered Sunderland, Hillyer & Co. (plaintiffs' exhibit A, fol. 581) it will be seen that the services charged for commenced while they were still in the midst of making the purchases. By looking at the account of Sunderland (plaintiffs' exhibit C, fol. 586) it will be seen that as to him the charge for services antedates all his purchases, some of the most important ones by nearly a year. From the account rendered Sunderland and Hillyer (plaintiffs' exhibit D, fol. 592) it will be seen that the first entry on defendants' books of any act of service performed for plaintiffs was on September 30, 1872, being the payment of a small amount of interest, and from the account of Sunderland (exhibit C, fol. 586) that the first entry of any act of service for him was October 5th of same year, in payment of certain taxes. Of the whole amount embraced in the charge, therefore, $1,500 was taken for services rendered prior to the commencement of those of a clerical character, evidenced by their books and accounts. The implied contract, therefore, if any existed, must have covered other services than these, and must have originated and been in force as early as the month of June, 1872. It is here, at this earliest period, that we must look for the proof of its inception and for the evidence establishing its scope and character. I assert unhesitatingly that there is nowhere in the record any evidence of any character tending in the remotest degree to prove the existence of such an agreement in the year 1872. All the evidence that has been introduced by defendants in respect to the subject of care and management is embodied in the testimony of John F. Olmstead. The other defendants have reiterated some of his statements, but they have testified to no new fact. For this reason, and that the character of the proof on this point may be more conveniently examined, and also for my own convenience in making references to it in this argument, I have appended quite voluminous extracts from the testimony of defendant Olmstead on this subject. These extracts do not embrace all that he has said in respect to it, but they present a full and fair summary of his testimony. (In commenting on this evidence I shall assume that each question and answer referred to in the appendix is read at the point where the reference is made.) Upon the point now being considered I wish first to call attention to what Mr. Olmstead says in respect to the placing by plaintiffs of the property purchased by them in the hands of the defendants for resale. (See Appendix, p. 1, q. 64, and p. 2, q. 488 and 489.)

These two distinct statements of Mr. Olmstead will, I presume, be considered as sufficient to establish beyond any question the averment in the complaint, that directly upon the completion of plaintiffs' purchases the property purchased was placed in the hands of this firm of brokers for the purpose of being resold when a satisfactory profit could be realized. In fact, this allegation is not denied in the answer. This fact of itself sufficiently explains why subsequently money was remitted to this firm and by it disbursed on account of

the plaintiffs for accruing interest, deferred payments and taxes. It deprives of all force any suggestion that from such remittances and disbursements an implied contract for care and management might be inferred. This fact being established, I wish now to show by Mr. Olmstead that beyond this simple act of placing this property in the hands of these brokers for sale nothing was ever done or said by either party upon which to base an implication of any agreement or understanding respecting its care and management, and I ask that the following specified questions and answers in the appendix be carefully read: p. 1, q. 478 to q. 487, p. 2.

Thus Mr. Olmstead admits his inability to state anything with regard to the origin of this alleged obligation. Mr. Sunderland went to Europe in May, 1873, and Mr. Hillyer in April of that year. Mr. Olmstead cannot say certainly that previous to this there was any care or management by the firm. He can state neither when, where, or how this supposed agreement came into operation. He admits that there was never any formal placing of the property with the firm for care and management, and that there was no actual request by either of complainants that it should in any way be cared for or managed by the firm. He in fact distinctly negatives any such request, for he says (see Appendix, p. 1, q. 64) that prior to the autumn of 1873 nothing was ever to his knowledge said upon the subject. (See also testimony of Kilbourn to same effect, fol. 818.) Neither is he able to state any single act of service of this character performed by the firm in 1872. (See Appendix, p. 3, q. 507 to 514, and p. 4, q. 531.)

Much less is he able to state any such act of service, knowledge of which at any time came to the plaintiffs, and without such knowledge no implication as to agreement for compensation could arise. Yet, if there was an agreement, it must somewhere and somehow have had a beginning. And I submit that when the defendants themselves are unable to state any fact, to point out any time, place, or circumstance in which it originated, there is good reason to suspect, as the plaintiffs assert, that it never existed.

SECOND—THE TIME AND CIRCUMSTANCES OF MAKING THESE CHARGES FOR CARE AND MANAGEMENT.

The basis upon which the amount of compensation was determined, as defendants testify, was that of an annual charge of $5,000 for each year from June, 1872, to June, 1878. *Yet no charge or entry of any character in reference to compensation was placed upon the books of defendants until December* 12, 1876. During all this period the defendants had in their hands money belonging to complainants. If they had supposed that they were honestly entitled to this compensation, they would naturally, and according to business methods, have charged it up annually, or semi-annually, and notified complainants that they had so done. The failure so to do, without reasonable

explanation, strongly accuses the charge as an afterthought. The only explanation attempted is by Mr. Olmstead. (See Appendix, p. 9, q. 916 and 923.)

The explanation there given is as silly as it is disingenuous. What possible objection could there be to spread before a clerk a charge for services performed if the charge was legitimate? Why this twaddle about contributing to societies, &c., in connection with a business transaction? Why speak about entries on an expense account when in fact there was *no entry whatever* of this charge, either on the expense account or anywhere else? The answer is simply a confession that there is no explanation of this most suspicious circumstance.

Again, this charge was made and money taken without any consultation with the complainants, or either of them, either as to the propriety of making the charge, or as to its amount. (Appendix, p. 9, q. 917 and 923.

It is such stuff as is contained in these answers which defendants offer as a justification for taking $22,000 of complainants' money not only without any authority, but without any previous notification of their intention. Nor is this all. Not only did they make this entry and take this money without previous notification, but they *studiously concealed from complainants the fact that it had been done for a period of more than a year and a half* thereafter, and until, by reason of the demand of an account current, its concealment was no longer possible. About this fact there is no dispute. The complainants both testify that until about the first day of July, 1878, neither of them had any knowledge or suspicion either that the charge had been made or that there was any intention on the part of defendants to make any charge of that character. The defendants admit that prior to July, 1878, they did not inform complainants of the fact, either by any account rendered or by any communication, written or verbal. (See appendix, p. 9, q. 925 to 929.)

Mr. Hillyer was in Washington for about two weeks in the summer of 1877 and saw the defendants frequently, and he testifies and they admit that no mention was made to him of this charge. These circumstances, I submit, are totally irreconcilable with the supposition that defendants *believed* this to be a just charge. Honest men do not do business in that way.

Third. I now propose to examine the evidence with a view of ascertaining just what services were in fact rendered by the firm of Kilbourn & Latta during the period from June, 1872, to the first of June, 1877, and first—

WHAT THEY DID DO.

They received, from time to time, commencing October 1st, 1872, sums of money from complainants, which they disbursed on their account in payment of principal and interest on notes given for de-

ferred payments of purchase money, and of the taxes accruing on the property in their hands for sale, and they kept on their books an account of these receipts and disbursements. This is substantially all that was done. The precise nature and extent of these services appear from the accounts on file showing the items and dates of receipts and disbursements. The labor which it involved consisted in calculating the amount due, principal or interest, on notes presented to them and drawing a check therefor, demanding from the tax collector, semi-annually, a statement of the taxes due, and drawing a check for the amount, and the entry of these transactions on their books. It involved no risk, responsibility or exercise of discretion, and required no skill beyond that posessed by an ordinary book-keeper. The firm during this period kept a book-keeper for their own business, who also acted as their cashier, to whom they paid a salary of $1,800 a year, and the work above enumerated was almost exclusively done by him. (Bull's testimony, fol. 508.) It is easy to see from an examination of the accounts that the performance of this labor would not occupy one person for one week in each year. Had this property not been in the hands of this firm for sale, and had they performed these services at request of complainants, they could not have recovered on a *quantum meruit* $200 per annum as compensation. But the property was in their hands for sale, and under those circumstances it is contrary to the universal practice to make any charge for services of this character. (Testimony of Warner, witness for defendants, fols. 490–491; of Fisher, witness for complainants, fols. 1638–1639.)

I do not suppose that defendants' counsel will seriously insist upon the performance of these clerical services as even a partial justification of the charges for "care and management" of this property.

WHAT THE DEFENDANTS CLAIM TO HAVE DONE, WHICH THEY DID NOT DO.

Sifting the vague generalities of the answers and the statements of defendants as witnesses in their own behalf, it will be found that the services which they claim to have rendered in what they term the "care and management" of this property are the following and no other:

1. Responsibility incurred by Latta as trustee.
2. Annoyance, vexation, and loss of credit and business by reason of the failure of complainants to meet their obligations.
3. Reductions of assessments for general taxes.
4. "Looking after" special improvement and sewer taxes.
5. Protection of the property from thieves and trespassers.
6. Writing up Washington real estate, and particularly northwestern quarter, in newspapers.

I will consider these several items separately, and

1ST—RESPONSIBILITY OF LATTA AS TRUSTEE.

In purchasing this property the title was, by agreement between complainants and defendants, and, for convenience in resale, taken in the name of J. M. Latta, trustee. As a result of this arrangement, when new notes for deferred payments were given they were made by James M. Latta, trustee, and secured by trust deeds executed by him as trustee. In one instance (square 195) he, for some unexplained reason, took the title in his own name without the addition of "trustee," and executed in the same way a note and trust deed for deferred payment. The amount of the notes which he thus signed as trustee or individually was something less than $130,000, the other deferred payments consisting of previously existing incumbrances assumed by complainants. From the answers and testimony of the defendants it is difficult to say whether they intend to insist upon the fact of their notes having been thus made as an element in the claim for care and management or not. If they do it is without any shadow of reason. If there had been thereby any actual liability incurred it would have been that of Mr. Latta individually, and in no way have affected the other defendants or the firm. But there was no actual responsibility incurred by Latta. All these notes were amply secured by the property, being in every instance given for a residue of the purchase price after the making by complainants of a large cash payment thereon. The payees looked entirely to the property. Had they cared for individual security they would certainly have preferred notes signed by the complainants, whose responsibility was, as the testimony clearly shows, vastly superior to that of either Mr. Latta or the firm of Kilbourn & Latta. The transactions were made in this way, not because of any supposition that Latta was incurring any risk or that he was adding to the credit of the notes, but solely as a matter of convenience and as a sequence of the arrangement to have the title taken and held in the name of Latta. This arrangement was for the convenience less of the complainants than of the firm of Kilbourn & Latta. Every deed made to Latta as trustee in express terms conferred upon him absolute authority to sell and mortgage the property conveyed. As respects any influence upon the credit either of Mr. Latta or the firm, the advantages of the transaction were vastly on their side. On the one hand Mr. Latta signed as trustee notes to the amount of less than $130,000, amply secured by deeds of trust, and on the other he had in his name, with absolute right of disposition, property of complainants which had cost more than a half million of dollars, and of which nearly $200,000 of the purchase price had already been paid in cash.

2D—ANNOYANCE, LOSS OF CREDIT AND BUSINESS BY REASON OF COMPLAINANTS' FAILURE TO MEET THEIR OBLIGATIONS.

Nothing will better show the fictitious character of the whole charge for care and management than a comparison of the allegations and proofs upon this specification.

Latta in his answer says:

> That from the time of said panic, September, 1873, said complainant, Hillyer, advised said firm of Kilbourn & Latta that he should not be able to meet, and he did not meet, his share of the payments of interest, deferred principal (purchase money), general and special taxes; nor did said complainant, Sunderland, meet his share thereof; that by reason thereof it became necessary for said firm and this defendant to spend their time and use their credit in saving said property of complainants from ruinous sacrifice. (Answer, paragraph 10, fol. 190.)

And again (answer, paragraph 11, fol. 192):

> By reason of the failure of said complainants to make the necessary remittances, defendant was compelled to, and did, borrow large sums of money to meet said debts and liabilities existing against said complainants' property; that in making such loans he gave deeds of trust in the nature of mortgages on portions of said property; he also executed his individual notes and used his individual credit and ability to secure money to meet the payments of interest, deferred principal, and general and special taxes existing on said real estate of complainants. The defendant says that for five years he was almost daily annoyed by duns and threats on account of notes he had executed at complainants' request for deferred payments on said real estate, and for loans he had made to meet interest, taxes, and other liabilities.

The answer of Kilbourn and Olmstead contains substantially the same averments. In his examination-in-chief as a witness on his own behalf, Mr. Olmstead (answer to q. 77, fol. 1029) testifies as follows:

> After they (complainants) failed to make remittances the creditors were very clamorous. The creditors, or holders of deferred notes, knew nobody in the transaction, so far as I am aware, but Mr. Latta, who made the notes generally, or the members of the firm. They did not know who the purchasers were, and in this section the notes were considered as being the notes of the firm and its obligations. After we had exhausted every other means of pacifying them and told them that the property belonged to other people they made the point that they did not know anything about that and it was too late to raise the point; that so far as they knew the firm of Kilbourn & Latta was responsible and they looked to them for payment. Carrying this amount of property through a panic was not a happy lot, and they would have been utterly ruined but for our exertions in regard to that property.

After reading these statements the court will be amazed at the exhibition of the real facts in this record. In all these allegations and statements there is not one word of truth. They are false in general, and false in each particular. How thoroughly destitute they are either of real foundation or plausible pretext is shown by the following facts, so clearly proven by testimony and documentary evidence that the defendants did not even attempt to contradict them:

1st. From the purchase of this property in June, 1872, up to June, 1876, a period of four years, *every obligation, whether for interest,*

deferred payments, taxes, or of any other character, was paid at the time it became due, from funds previously furnished by complainants to the defendants therefor, from outside resources independent of the property.

2d. At the time of the dissolution of the firm, January 1st, 1877, the only demands overdue and unpaid were residues of three notes, given for deferred payments, to wit: a residue of $11,000 on note to August Muller, secured by deed of trust on property which had cost complainants $75,000, and upon which there was no other incumbrance; a residue of $10,000 on note to Stoughton, secured on property which had cost complainants in 1871 $40,000, and on which there was no other incumbrance; a residue of $10,000 on a note to Riggs, secured upon property for which complainants paid in 1872 $50,000, and upon which there was no other incumbrance. The first two of these notes were made by complainant Hillyer, individually, and no member of the firm of Kilbourn & Latta had any connection with or responsibility for them in any manner whatever. The above balances became overdue only a few months before the dissolution of the firm, and the only reason why they were not paid was because the holders preferred that they should not be paid, as each bore interest, and was abundantly secured. (Testimony of Bull, fol. 514, 515.)

3d. During the entire period from the purchase of this property, in 1872, up to the dissolution of the firm of Kilbourn & Latta, January 1st, 1877, *there was no time when said firm did not have in their hands a balance of funds belonging to complainants* over and above all payments made on their account, and amounting generally to several thousand dollars. This balance was on the 1st day of January, 1875, over $5,000; on the 1st day of January, 1876, over $2,500, and on the 1st day of January, 1877, over $18,000.

4th. No loan for the purpose of making payments was made on any of this property until October, 1876. Up to that time all payments were made from cash remittances by complainants. At the time of making this loan the financial situation of the property was in round numbers, as follows: Original purchase price of joint property of Sunderland & Hillyer, $435,000; individual purchases by Sunderland, $150,000; total, $585,000. Of this purchase price there was paid in cash at time of purchase $165,000 and there was remitted by complainants for making payments, between October, 1872, and October, 1876, $303,000, making total amount of cash paid by complainants up to that date, $468,000. Under these circumstances, and upon the advice of defendants that a large amount of money would soon be needed to make payments, complainants authorized the borrowing of $50,000 on the property, and a loan of that amount was effected, secured by deed of trust on a single square (156). For making this loan complainants were charged commission at the regular rates. The $50,000 went immediately into the hands of the defendants, and out of it they shortly after appropriated to themselves $22,000, upon pretext of the charge for care and management.

5th. At the time of the dissolution of the firm, as above stated, they had in their hands belonging to complainants an unexpended

balance of over $18,000. Notice of the dissolution was conveyed to complainants in a letter from defendant Latta (in evidence), in which he says that he, Latta, will continue to attend to the business of complainants. The $18,000, however, was turned over to the new firm of Kilbourn & Olmstead, as they now say, upon an understanding between themselves and Latta that it should be disbursed by them on account of complainants from time to time as needed. The existence of this balance or of any balance in their favor was carefully concealed from the complainants. Kilbourn & Olmstead, as shown by their account rendered the last of June, 1878, did during the year 1877 and first half of 1878, from time to time disburse portions of this $18,000 on account of complainants, but at the latter date (July 1, 1878) there was still in their hands an unexpended balance of over $2,500. As shown by their account the balance of this fund in their hands in April, 1877, was over $10,000, and in July over $7,000. During this same period, from the 1st of January, 1877, to 1st of July, 1878, complainants, knowing nothing of this balance in the hands of Kilbourn & Olmstead, and on the representation of defendant Latta that it was necessary to meet payments, remitted to said Latta in cash the sum of $18,700. They also, upon his representation that more money was needed, authorized him to make, and he did make, a loan of $35,000, secured on property of complainants worth four times the amount. During this period, Latta also had in his hands funds belonging to complainants, the balance shown in his account rendered in July, 1878, being over $5,000.

About the above facts there cannot be, and there is not, any dispute. They are not only incontestably proven, but they are, in fact, no longer controverted by the defendants themselves. This will sufficiently appear by the following extracts from the cross-examination of defendant Olmstead. (See Appendix, p. 5, q. 663 to q. 671; and p. 6, from q. 679 to q. 684; and from q. 688, p. 6, to q. 726, p. 8; q. 867, p. 8. See also testimony of Kilbourn, fol. 857, where he admits that no obligations were overdue before July, 1876; and also fol. 862, where he is questioned and gives no facts showing an injury of credit.)

Certainly these extracts are sufficient to convince the court of the correctness of the statement of facts in the five preceding propositions. These facts need no commentary. Their mere statement is a conclusive refutation of every allegation and every suggestion of the defendants in their answers on this subject. They never in any way supported the credit of the complainants. The credit of complainants needed no support. They never executed or indorsed any note or obligation of any character for complainants. They were never harassed or annoyed by any creditors of complainants. There were no overdue obligations of complainants except of trifling amount, and these by the consent and preference of the obligee. No creditors ever looked to them or gave them any consideration in respect to the obligations of complainants. They never did or suffered any

of the things in this respect which they alleged themselves to have done and suffered.

On the contrary, the complainants, during all these years, when the pressure of the panic was most severe, without making any sales of this property, from their own outside resources met and discharged all their obligations with a promptness for which, in those times, it would be hard to find a parallel. Not only this, but during all this depressing period the defendants, who, as they say, were themselves speculators, had in their hands and kept in their own general bank account, subject to their own check, from three to eighteen thousand dollars of money belonging to the complainants. This money they used themselves to meet their own obligations, and they used it, too, in such manner that at least between October, 1876, and May, 1877, they could not, had it been needed by the complainants, have replaced it to their credit. (See Appendix, p. 9, q. 935; and also testimony of Kilbourn, fols. 863–864.)

Not only are these charges utterly devoid of truth, but they are so palpably and impudently false as to force the conclusion that at the time they were made and sworn to the defendants deliberately intended to state and verify a falsehood. Mr. Olmstead when confronted with the facts and pressed for an explanation could only refer to two circumstances as the basis of this allegation: 1st. A refusal by one Young, in the fall of 1873, at the time when the banks of Washington by agreement suspended payment for a few days, to accept a certified check upon a solvent bank in payment of his demand; and 2d. Annoyance to the firm by the presentation for payment in June, 1876, by one Muller, of a note for $11,000, not signed by any member of the firm and secured upon property of the value of more than $75,000. In reference to this note Mr. Muller, called as a witness in rebuttal, flatly contradicts every material statement made by Olmstead. (Plaintiff's rebuttal, fols. 1688–1689.) Such pueril excuses as these are nothing else than a confession of the solute groundlessness of these charges.

I conclude this point with a single reflection: The defendants being clearly convicted of having sworn falsely in reference to this matter, what credit should attach to their sworn statements as to other transactions in respect to which there is a conflict of evidence?

3d—REDUCTION OF ASSESSMENTS FOR GENERAL TAXES.

Not much prominence is given to this item in the answers. Mr. Olmstead in his testimony, however, attempts to magnify the service into something important. His claim is that after each of the several assessments he went before the board of equalization and obtained a reduction in the value of the property below that originally fixed by the assessor; that this involved much time and labor and was of great benefit to the complainants. The labor, as he states, consisted in appearing before the board and making an oral representation as

to the value of the property. He does not claim to have prepared or used any written evidence or to have produced any other witnesses than himself. When it is considered that this is wholly unimproved property, that its value was controlled solely by its location, that it consisted for the most part of whole squares or large blocks of contiguous lots, that it was situated in the midst of a large area of unimproved property assessed at the same time, that the board itself had therefore little else to do than to conform and harmonize these valuations in accordance with a general plan of valuation applicable to the whole District, it is difficult to see when there was opportunity for the rendition of any considerable services by defendants in connection with the fixing of these valuations. (See testimony of W. H. Clagett, fols. 1604–1605.)

There is no obvious reason why a man familiar with the property of complainants and its surroundings, and with the city plats before him, should not in one half-day make every explanation and present to the board every consideration legitimately affecting its assessable value. Upon this, as upon other points relating to their alleged services, the defendants prefer to deal in wholesale statements, and decline to enter into details and specifications. (See Appendix, p. 2, q. 498 to q. 508, p. 3.)

To meet these sweeping declarations, and to take the investigation out of the domain of glittering generalities and bring it down to a basis of actual fact, the complainants employed an expert to make from the books in the assessor's office a table, which they introduced in evidence, showing, in reference to each parcel of property owned by them, the original assessment made by the assessor, and the reductions from its valuations made by the appeal board, and covering all the period from June, 1872, to January 1st, 1877. From this table it appears that for this entire period the difference in amount of tax computed on the basis of the original assessment and that fixed upon revision by the board of appeals upon all of said property was $2,894.26. (Ex. G. M. K. No. 1, and testimony of Kessler, fol. 1583.) Mr. Olmstead testifies that the work performed by the firm in procuring a reduction of this general tax was similar to that performed by himself under a special contract with complainants in procuring a reduction of special improvement taxes, according to which contract he was to receive, and did receive, ten per cent. on the amount of reduction. Accepting this as a basis (the fact being, however, that the labor of revising a special improvement tax is much greater than that in procuring reduction of a general tax), (see testimony of W. H. Clagett, fol. 1626), the value of the service performed by the firm of Kilbourn & Latta in this respect was $289. Nor, independently of what Mr. Olmstead says, is there any reason to doubt that complainants could have contracted beforehand with persons competent to attend to the business of procuring this reduction upon a basis of ten per cent. as compensation. But even this trifling amount defendants had no right to charge to complainants.

It is a kind of service which brokers having in their hands property for sale perform ordinarily, if not universally, without charge. (Testimony of Fisher and Warner above cited.)

How little importance the defendants themselves attached to this item of alleged service is shown in the fact that defendant Latta charged for "care and management" at precisely the same rate for the year 1877 and first half of 1878 which had been previously charged by the firm, and yet during this latter period *there was no new assessment*, and so far as appears Latta never went to the tax office.

4TH—SPECIAL IMPROVEMENT AND SEWER TAXES.

These items can be disposed of very summarily. Complainants never paid any sewer tax nor did defendants ever do any act in respect to such tax, either by way of revision or otherwise. (See Appendix, p. 3, q. 520, 521.) Congress (in 1874 or 1875, I think) repealed the entire tax. Olmstead's claim of service in this respect for complainants is that the firm favored the repeal and worked for it because they considered the tax as an outrage. The testimony of W. H. Clagett (fol. 1626) makes it very doubtful whether the firm was not on the other side. At any rate the discovery by the firm of the outrageous character of the tax came very late, for in September, 1873, they wrote to Sunderland advising its payment in full. (Ex. H. K., No. 1, fols. 919–920.) Prior to July, 1878, only a very small portion of the special improvement taxes assessed against complainants' property were paid, and these were paid without revision. The tax was generally supposed to be illegal until the action of Congress in 1878 providing for revision and payment. In July, 1878, complainants made a special written contract with J. F. Olmstead, individually, to attend to the revisions of these taxes, for which he was to be allowed ten per cent. on the amount of reduction obtained. At the time of making this contract defendants Kilbourn and Olmstead owed to the complainants an admitted indebtedness of about $2,700, which they were unable to pay, and the purpose of the agreement was to permit Olmstead to work out this indebtedness. Under this contract Olmstead obtained a revision of the special improvement taxes, paid and unpaid, and received therefor the stipulated compensation of ten per cent. on amount of reduction. No ingenuity can suggest a decent pretext for including in a charge of "care and management" by the firm of Kilbourn & Latta between 1872 and 1877, services which were not rendered until after July, 1878, and then rendered under a special contract and paid for by the complainants. On cross-examination, Olmstead is compelled, in fact, to abandon this absurd claim. (Appendix, p. 9, q. 912 to 914.)

5TH—PROTECTION OF PROPERTY FROM THIEVES AND TRESPASSERS.

I would not mention a charge upon its face so frivolous as this, were it not that Mr. Olmstead has persisted through several pages of testimony (defendant's testimony, not in appendix) in attempting to dignify it as an important service included in the charge for care and management. The property was wholly unimproved and needed no protection. There was nothing to steal. There was nothing to be injured by a trespasser. Mr. Olmstead, after a great deal of rambling talk about the turbulence of the times and the dishonesty of street contractors, was only able, after the fullest opportunity, to specify one single act of service in this respect performed by the firm, to wit: That in 1873 a portion of the sidewalk on one side of square 93 was taken up and removed to the depot for materials of the Board of Public Works, and that he, ascertaining this, made a memorandum of the facts and the amount taken, by virtue of which memorandum he, in 1878, was enabled, acting under his special contract with complainants, to reap a drawback of several hundred dollars for complainants, upon which he received his ten per cent. The service consisted in writing this memorandum; and even this was not used for the benefit of complainants until 1878, and then only upon payment to Olmstead of a special compensation.

Warner, a broker, witness for defendants, says he knows of no services which could be rendered for the protection of unimproved property. (Fols. 941–942.)

Fisher says the same. (Fol. 1639.)

I presume the defendants' counsel will not insist that any attention should be paid to this item.

6TH—WRITING UP WASHINGTON REAL ESTATE IN THE NEWSPAPERS.

Mr. Olmstead, in his testimony, with apparent seriousness, insists upon this as a service to complainants, and a proper element in the charges for "care and management." He does not claim that anything was ever written specially about the property of complainants. It was a generous, self-sacrificing effort in behalf of all the real estate owners of the city. I submit that the charge should have been a general one against all these owners and not against the complainants particularly. I fear they were not very effective writers, for with all their efforts they were unable, according to their own statement, during all the period up to 1878, to create a single ripple in the real estate market. My only apology to the court for noticing such trash as this, is that defendant Olmstead, with apparent earnestness, contends that this was a service to the complainants for which they were liable to pay the defendants. (See appendix, p. 6, q. 683 to 687.)

The above specifications embrace every species of service claimed or suggested by defendants as a justification of their charge of $30,-

000 for care and managament. I have considered them separately, and perhaps at unnecessary length, because I desired that the precise character and extent of each should be seen and apprehended distinctly. I was unwilling that the real facts should be buried under such vague phrases as "treated the property as our own," "great and constant labor," "heavy responsibility," "sacrifice of business and credit," and other similar sweeping, and in the mouths of these defendants, meaningless expressions. There is no room for doubt as to the result of this examination. The charge for care and management is absolutely without foundation. It is a mere fancy charge. Outside of the mere clerical labor of receiving and disbursing money, and keeping accounts of the same, their pretended services are either wholly imaginary or too trivial for serious consideration. Moreover, these services, real and pretended, were all of the character ordinarily performed without charge by brokers, having in their hands property for sale, and their value was vastly overbalanced by the advantage to defendants of having the larger amount of property in their hands for sale, and of having their bank account through all the five years supported by the large cash remittances from complainants, constantly in excess of the disbursements made on their account.

When the court by an examination of the evidence shall have satisfied itself of the correctness of these conclusions as to the actual nature and extent of the services rendered by defendants, as a basis for the charges of care and management, it will have little difficulty in disposing of another question in respect to which there is a conflict of testimony, namely:

FOURTH—WAS THERE ANY, AND IF SO, WHAT EXPRESS AGREEMENT BETWEEN PLAINTIFFS AND DEFENDANTS IN REFERENCE TO THIS SUBJECT?

The complainants say that from the time this property was put into the hands of the firm for sale there was an understanding and implied agreement that the defendants should perform the services which they did perform, without other charge than the regular commissions on sales that might be made or on loans that might be effected by defendants, and that in the early part of 1875, prior to which time nothing had ever been said upon the subject, there was a conversation on the subject in which this was expressly agreed to by defendants.

In their answers upon this point there is a serious disagreement between the defendants themselves. Latta in his answer says:

Complainant Hillyer in the fall of 1873 inquired of the said firm of Kilbourn & Latta what their charge would be for caring for, managing and preserving said property, taking care of general and special taxes, interest and deferred purchase money, and this defendant informed him that the charge of the firm would be one per centum per annum on the cost of said property so long as it was so left to be cared for, managed and preserved, to which said Hillyer for said complainants *agreed* and consented:

And again:

> That said services were rendered at the request of said complainants with the agreement and understanding that said firm of Kilbourn & Latta should be paid therefor one per centum per annum so long as they had the care and management of said property for said complainants, which said rate is a very low and inadequate compensation for the services of said Kilbourn & Latta in the premises.

Kilbourn and Olmstead in their answer do not claim that there was any agreement. They say:

> They allege the truth to be that after Mr. Hillyer returned from Europe the question of compensation to the said firm for the care and management of the said property was discussed; the firm insisted that for the care and management of the said property and for the services which they had already rendered from the beginning of the transactions for the said complainants, the firm should be allowed at the rate of one per cent. per annum upon the purchase price of the property; the said complainant Hillyer expressed it as his opinion that one per centum per annum was too much, but these defendants think that the said Hillyer at the time suggested that perhaps three-quarters of one per cent. would not be unreasonable, and there the negotiations and conversations touching the subject of compensation ended, and nothing further was ever said between the parties upon the subject, so far as these defendants know or are informed and believe.

There is no way of reconciling these allegations. Latta (his answer having originally been filed, it will be remembered, in the United State Circuit Court for Indiana) avers distinctly that there was an absolute contract to pay one per cent. per annum. Kilbourn and Olmstead say, just as distinctly, that there was no such contract nor any contract whatever. Olmstead, when examined as a witness, states repeatedly that there was no agreement. (Appendix, p. 1, q. 64–5, p. 2, q. 490, and p. 9, q. 919 to 923.) Nor is it possible to suppose that this difference in statement is the result of any mistake or ignorance of either of the parties. It is incredible that Latta should have supposed an agreement to exist when in fact none had been made. It is incredible that he should have known of an agreement and not have communicated this knowledge to his partners. It is equally incredible that Kilbourn and Olmstead should have been told by Latta that an agreement had been made, and have subsequently forgotten the fact. The statement of Mr. Olmstead that the partners consulted and agreed between themselves as to the amount which should be charged, and that to aid them in coming to a conclusion they inquired of Mr. Mattingly as to the fees allowed to administrators is too circumstantial and definite to permit any supposition of mistake or forgetfulness in respect to the existence of an agreement. The only open question is as to which, if either of them, has told the truth. They may all have testified falsely, but they cannot all have testified truly or honestly.

And first, as to Latta's statement, it is easy to demonstrate its falsity, independently of the contradiction of his co-defendants. He says the express agreement was for the payment annually of one per cent. on the purchase price of the property. He says this purchase price was over $600,000. Why, then, did they charge only

$5,000 per annum when they were entitled by contract to over $6,000 per annum? From the time of the making of this alleged agreement, in the fall of 1873, up to the summer of 1878—as all the defendants testify—no word upon this subject was ever exchanged between either of the defendants with either of the plaintiffs. Why, then, not only without a request, but without any knowledge of complainants, were they relieved from the payment of more than $6,000 due by them to defendants on express contract? It was not for want of funds. At the time the charge was made by the firm, and the $22,000 taken, they had still in their hands, of money belonging to complainants, over $18,000. It was not in consideration of any supposed hardship in enforcing the bargain against complainants, for Latta says in his answer that $6,000, and Olmstead in his testimony that $5,000, per annum was a grossly inadequate compensation for the services rendered. Was it, then, an impulse of generosity or gratitude? No one who reads this record will accuse these defendants of any such romantic nonsense. They were takers—not givers. Mr. Latta has attempted no explanation of this remarkable abnegation of his contract rights. There is but one explanation to be given, and that is that he had not, more than his partners, the faintest suspicion that any such contract ever existed.

Again, if there was a special agreement for a fixed annual amount of compensation made as early as 1873, why was not an annual charge of this amount made against defendants? Every other expense incurred on behalf of plaintiffs, even to telegrams sent and received, was, as the accounts show, charged with the utmost promptness. Not to make this charge, and demand and receive payment for it, was a violation of the most ordinary business principles. It was plainly for the interest of the defendants that this should be done. Had the complainants agreed, as alleged, they would not and could not have complained. Upon the theory of Kilbourn and Olmstead that this matter of compensation was still undetermined and under advisement by the firm, a more plausible excuse for delaying the entry and payment might be made. But upon the hypothesis of an express agreement, it is susceptible of no reasonable explanation.

Again, as has already been shown, during the first year and a half at least of the period covered by the charge, there was never anything said about the defendants caring for or managing this property. It was simply placed in their hands as brokers for sale, and beyond this nothing was said or done from which a request could be inferred or obligation implied in reference to "looking after," "caring for" or "managing" it. I insist that it is most improbable that in the fall of 1873 Mr. Hillyer, himself owning less than one-fifth interest in the property, should have undertaken to bind by agreement Sunderland and himself to the payment of some $7,000 for alleged previous services which had never even been the subject of conversation between the parties, and to the payment of $6,000 per annum for undefined services in the future.

To the above considerations add further the trifling character of the service actually rendered, as heretofore shown, in comparison with the alleged amount of agreed compensation, and the fact that their services were in character and extent the same as are usually performed without charge by brokers having in their hands property for sale, and it does not seem to me necessary to refer to the clear and explicit denials of both the complainants to convince the court that the allegation of the defendant Latta as to this agreement is only another of those improbable fictions which he fabricates with so much facility and with so little regard to plausibility.

Eliminating, then, from the discussion Latta and his pretended agreement, there is still a radical difference between the complainants and Kilbourn and Olmstead as to what was said on this subject. All agree that there was but one conversation, and that this was between Kilbourn and Latta on the one side, and Hillyer alone on the other. It is not pretended that anything was ever said or written to or by Sunderland upon the subject. The defendants locate this conversation with Hillyer in the fall of 1873. Hillyer says it occured in the early part of 1875. The date is not very material, but considering that the conversation was admittedly induced by the protracted failure of defendants to make any sales from which commissions could be realized, and the discouraging outlook for sales in the immediate future (Appendix, p. 1, q. 65), it is much more likely that it took place in 1875 than in the fall of 1873, immediately after the panic, when its far-reaching and disastrous consequences upon business and particularly its influence upon the real estate market were foreseen or even suspected by but very few. But the important thing is what was said and not the time at which it was said. Hillyer's version of the origin and substance of the conversation is this: that seeing that this property had been in defendants' hands for sale for several years without any sales having been made, or commissions realized, and that the defendants had, during this period, and were still being put to considerable trouble in attending to the receipt and disbursement of money, keeping accounts, giving notices to plaintiffs of the needed remittances, &c., for which they had, as yet, received no compensation, and owing to the flatness of the real estate market with a chance that a realization of commissions from sales in the future might be somewhat remote, he thought it best to have a distinct understanding on the subject, and with this view, in a conversation with Latta and Kilbourn, in which they were discussing the general prospect, mentioned the matter himself, and inquired whether under the circumstances they were willing or desired to continue to attend to the business as theretofore; that thereupon, Latta (and let me say if he had not seen and attempted to improve this opportunity would not have been himself) stated that the services rendered by the firm had been very onerous, and in the future would be much more so (dwelling upon the efforts which they intended to make in creating a market for the property),

and that he thought they were entitled to extra compensation, and suggested an increased percentage on sales over and above regular commissions—that *he*, Hillyer, refused positively to accede to this or to consent to any extra allowance in any shape beyond regular commissions on sales and loans, and stated that there were plenty of brokers who would be glad to have the property in their hands and attend to the business on those terms. After some—not very much—talk, both Kilbourn and Latta agreed to retain the property, attend to the business, and to make no charge therefor beyond commission on sales and loans at regular rates; that he never said or heard anything more about the matter until the presentation of the accounts in the summer of 1878.

The version of Kilbourn and Olmstead in their answer differs from that of Hillyer in three points. They say, first, that Latta insisted throughout on one per cent. on the *purchase prices;* second, that *they think* Hillyer suggested that ¾ of one per cent. "would be a round charge"; third, that no conclusion was arrived at, and that there was a controversy *as to amount,* which was left open for future determination. But when examined as witnesses each of them admits that he did not himself hear Mr. Hillyer say anything about ¾ of one per cent. or make any suggestion as to amount of compensation in any form. (Testimony of Olmstead, fols. 1021, 1289. Testimony of Kilbourn, fols. 819, 820.) Kilbourn there says that so far as he himself heard the conversation Hillyer insisted that there should be no compensation beyond commissions.

The statement in their answer upon this point was, as they say, based not upon anything they heard, but upon what Latta told them had been said. I shall not further discuss the value of information obtained from this source, but content myself with a brief mention of certain circumstances which tend strongly to corroborate the statement of Hillyer and to discredit that of Olmstead and Kilbourn.

1. The subsequent conduct of complainants was entirely consistent with the truth of Hillyer's statement. If, as he says, the result of the conversation was a definite understanding, then it was natural that plaintiffs should say nothing more about it themselves nor expect anything further to be said about it by defendants. If, however, the conversation resulted in an unsettled controversy under a claim of defendants to over $6,000 per year of extra compensation, it is difficult to believe that the plaintiffs would have remained silent themselves or permitted the defendants to remain silent for a period of nearly five years thereafter, and until the whole amount of the claim should have aggregated over $36,000.

2. The subsequent conduct of defendants, if honest men, is entirely inconsistent with the theory of an unsettled controversy.

a. The claim being of a right to annual compensation, they permitted more than three years to pass by before even making an entry in their books in respect to it. During nearly this entire period Mr. Hillyer was residing and had a law office in Washington. The

proper and natural time for entering the charge and requiring payment was at the close of each year. If the amount was in dispute it should have been settled. This long-continued silence and inaction is a most unnatural sequence of an inconclusive discussion as to the amount of an annual compensation for services.

b. If there had, in fact, been a conversation between plaintiffs and defendants on the subject of compensation which developed a disagreement between them, and closed without any definite conclusion having been reached, it is scarcely credible that defendants, on the hypothesis that they were honest, would, as they say they did in December, 1876, agree between themselves as to the amount of the charges, and abstract this amount from the funds of the plaintiffs without any consultation or attempt at consultation with plaintiffs or either of them.

c. Upon the same assumption it is still harder to reconcile either with honesty of intention or with that decent respect for appearances which even dishonest men usually seek to preserve, that, having thus *ex parte* decided the controversy and charged and collected this sum of $22,000, they should not only have failed to notify the complainants of their action, but should, as they did for more than a year and a half, have studiously concealed the fact from them, and have only disclosed it when concealment was no longer possible.

d. In the latter part of 1877 the defendants quarreled among themselves. Latta sued Kilbourn and Olmstead, and Kilbourn and Olmstead sued Latta, each side charging the other with fraud. In Latta's complaint were also allegations tending to show injuries done or threatened by Kilbourn and Olmstead to the interest of Sunderland and Hillyer. Under these circumstances Latta wrote to complainants requesting authority to act as their sole agent respecting their (plaintiffs') property. On the 6th of December Hillyer, in reply, wrote to Latta a letter, a copy of which, together with Latta's answer to the same, is in evidence. (See exhibits M and N, fols. 749, 752.) In his letter Hillyer among other things says:

> With reference to your request for written authority as our agent, I am somewhat at a loss what to say. If by this is meant authority to commence or continue litigation with Kilbourn & Olmstead, then, for the reasons above stated, deeming the litigation unnecessary, I prefer not to authorize it. If it be for the general management of our business, I presume no further authority is necessary. In fact I am a little confused as to the precise standing of this agency at present. *In* 1875, *at the suggestion of Sunderland, I made an arrangement with the then firm of Kilbourn & Latta to manage the property standing in your name as trustee substantially as follows: They were to have a general oversight of the property and look after our interests. For small matters, such as payment of taxes, interest, street assessments, &c., they were not to make any charge, but for sales and negotiations of loans, &c., they were to receive the regular commissions. No other express arrangement has ever been made to my knowledge.*

Then, after stating certain reasons for supposing that Kilbourn & Olmstead, notwithstanding the dissolution, were still interested in plaintiffs' business, he adds:

> This did not surprise me, for I could well understand that under the original

arrangement it would be an object to them to retain the opportunity to make sales and realize the commissions.

* * * * * *

While under our arrangement we were at liberty to withdraw this business from the firm of Kilbourn & Latta, still there are some equities arising from the attention which has been given to it which I recognize, and which, without some reason, I do not wish to attempt to distribute arbitrarily between the members of the firm.

Latta, in his answer, written a few days afterwards, which is quite lengthy and shows that he had carefully read and considered the letter of Hillyer, *makes no mention or allusion to the paragraphs above quoted or to their subject-matter.* Bear in mind that these letters were written in December, 1877, seven months before either of these complainants knew or suspected that any charge for care and management had been made or was contemplated. Mr. Hillyer's letter shows on its face that the recital of the terms of the arrangement made in 1875 was not because of any supposed question as to the fact or any doubt that the correctness of the statement would be recognized by Mr. Latta. The only purpose of the recital was to explain the grounds upon which he refused to accede to Mr. Latta's request for authority to act as sole agent for the plaintiffs. Yet, although made thus incidentally as a premise for a conclusion on another subject, the recital is so clear and distinct that it is impossible it should either have been unnoticed or misunderstood.

What explanation, then, can be made of Latta's answer? If Hillyer's statement was incorrect, it certainly called for an instantaneous and explicit denial. Silence under the circumstances was either an admission or a fraud; in fact, it was both. One reason, perhaps, why it was not denied was because Latta knew it was true. With him, however, this would have had little weight. The principal reason was that he knew that a denial would lead at once to a controversy, to an investigation and discovery of the large amount already taken under this pretext, and thereby to the immediate withdrawal from defendants of the property and business of plaintiffs, cutting off all chance for future gains, legitimate or illegitimate. I say these were his motives, because no other, at least no better ones, can be suggested. If his present assertions are true, then in this letter he was guilty of a *suppressio veri* no less immoral and no less injurious to plaintiffs than would have been an express declaration of that which he knew to be untrue.

Fifth. Mr. Latta, in his answer, closes his reference to the taking of the $22,000 by the firm of Kilbourn & Latta in June, 1876, with the following averment:

This defendant avers that he never received any part of the amount so charged and applied; that one-half of it was credited to and received by said Hallet Kilbourn, and the other half thereof was credited to and received by said John F. Olmstead; that both of said complainants saw said entry on the books of Kilbourn & Latta before the 15th of June, 1878, and well knew that this defendant received no part of said sum of money.

In his deposition (fol. 284) Mr. Latta also says:

Question. When and how were the charges entered by the firm of Kilbourn & Latta, or the firm of Kilbourn & Olmstead, for the caring of the property?

Answer. In December, after we had agreed upon the dissolution and *agreed upon this charge* to Sunderland and Hillyer, the charge was entered up by Mr. Olmstead on the books of Kilbourn & Latta, for the care and management of their property in accordance with our agreement, one-half of it being credited to Olmstead and one-half to Kilbourn, *I receiving no benefit from the charge whatever.* That charge the complainants saw and examined on the books of Kilbourn & Olmstead on or before the 15th day of June, 1878, *and they saw that I received no part of this charge.*

On reading this I am tempted to think that after all there is, lingering somewhere about the spiritual nature of Latta, a remnant of conscience. Not that I have any idea that what he states is true. Doubtless he did receive his share of the plunder. But the fact that he denies it evinces some appreciation in him of the real character of the transaction, and is so far commendable. But, however good as a confession, as a defense it is marvelously absurd. If he did not himself take this money, he authorized and aided Kilbourn and Olmstead to take it, and his responsibility to the plaintiffs is neither less nor different.

Olmstead testifies positively that he did receive his full share, and that he received it at the time and in money. (Cross-examination, q. 895.) Kilbourn says the same. (Cross-examination, q. 432.) What earthly reason can he or any one else suggest for his failing or refusing to receive it? According to his present statement, this and considerably more was due by express contract. It had, as he says, been doubly and trebly earned by years of toil, anxiety, and sacrifice of business and credit in advancing the interests of plaintiffs. If half what he says in this respect is true, an angel need not have blushed to receive a reward so well merited. Whoever believes that Latta would yield a dollar or a penny of what was so due him will believe that a camel can pass through the eye of a needle. He did receive his share of the money, and his denial of it only betrays a consciousness of his inability to support by proof the false justification to which he had previously sworn.

I am anxious to see how this twice solemnly asseverated statement of Latta will be treated by defendants' counsel. The counsel for Kilbourn and Olmstead will, of course, pronounce it a falsehood. They will therefore accept the inevitable consequence and decline to ask the court to attach any weight to any of the sworn assertions of Latta in relation to the other contested facts in the case. Perhaps they will not consider this much of a sacrifice. The position of Latta's counsel will be more difficult. He must not only disclaim any aid for his defense from the testimony of his co-defendants who have thus directly impeached the veracity of his client, but he must take upon himself the task, to which in my judgment no ability will be found adequate, of explaining why his client should have refused to accept his share in a large sum of money, doubly earned, and due him, as he says, by express contract.

Sixth. All that has been said on this subject applies equally to the charge made by Latta for the year 1877 and first half of 1878 as to that made by the firm for previous years. But there is one feature which renders the making of this charge by Latta alone peculiarly absurd. He had no authority to act as the agent of plaintiffs, except as a member of the firm of Kilbourn & Latta. Kilbourn & Olmstead made no charge for this period. Yet, as Olmstead testifies, they were, and considered themselves just as much or a little more entitled to manage complainants' business as Latta, and in fact did nearly as much about it as he did. (Appendix, p. 8, q. 727 to q. 730 and q. 867.) In November and December, 1877, Latta, in several letters written to one or the other of complainants, asks for authority to act as their agent, and says that Kilbourn and Olmstead deny it, and asserts that he has no express authority. (See exhibits T. S. No. 13, No. 14, No. 20, fols. 735, 736, 742.) This authority, for the reasons stated in Mr. Hillyer's letter of December 6, 1877 (exhibit M, fol. 752), was refused. During this period he spent most of his time in Indiana, to which State he in 1877 removed his residence. What he did as to plaintiffs' business is fully explained by Mr. Hillyer (fols. 650–654, inclusive), and the facts there stated are not contradicted. His interference in the two or three matters where he did interfere was a positive injury to the complainants.

II.

FRAUDS IN PURCHASES.

The general facts relating to these purchases as stated by the plaintiffs are as follows: In the spring of 1872 the complainants and William M. Stewart determined to invest a considerable amount of money in unimproved real estate in the northwestern quarter of the city of Washington. They consulted the defendants, a firm of real estate brokers then doing business under the style of Kilbourn & Latta, and employed them as brokers to take charge of the business of negotiating and making the proposed purchases, for which services they were to receive commissions at the regular rates. Pursuant to this arrangement, in the months of May and June, 1872, property to the amount of $370,000 was purchased, consisting of unimproved lots in the northwestern part of the city. The negotiations for these purchases were conducted entirely by defendants, except that in a single instance and for a special reason Col. J. G. Berrett acted in conjunction with them. The plaintiffs never had any communications in respect to these purchases with the sellers, nor, with the single exception above mentioned, with any one else than the defendants. (Testimony of Olmstead.) At the suggestion of defendants they carefully abstained from so doing. They trusted the defendants as their agents to act, as by this relation they were bound to act,

entirely in their interest. The plaintiffs made no purchases to which they were not advised by defendants, and until the limit of their proposed investment was reached they rarely, if ever, declined to authorize a purchase recommended by defendants. Having little experience in such matters themselves, and taking no other counsel, they very naturally trusted to the experience and reputed ability of the agents whom they had selected. For many years after the completion of these purchases they did not suspect, or have any reason to suspect, that this trust had been violated.

In the spring of 1881 certain suspicious circumstances first came to their knowledge, which led them to investigate. The investigation disclosed that in several of these purchase transactions the defendants had misrepresented to plaintiffs the real purchase price at which the property was obtained, and thus procured plaintiffs to pay as the purchase price a much larger sum, themselves retaining the difference, and thus realizing large profits over and above the commissions. Soon after this discovery this suit was commenced, its purpose being to recover from defendants the illegitimate profits so obtained by them, in addition to the amount wrongfully taken for care and management, for which suit had previously been commenced.

The defense is in substance a denial of the defendants' agency and of the existence of any fiduciary relation whatever between them and plaintiffs in respect to these purchases. The defendants do not deny making the profits out of these several transactions, as charged in the bill, but they justify it as a legitimate business operation, in which they, as vendors, or agents of vendors, occupied towards plaintiffs as purchasers, an antagonistic instead of a confidential position. The primary issue is, therefore, upon the relation existing between the parties. The question is one of fact, and the burden of proof is upon the complainants.

There is no presumption arising from the general character of the transactions in favor of either theory. The defendants were, by profession and practice, brokers for purchase as well as for sale. Their employment by plaintiffs as their agents, to make these purchases, would have been an ordinary business transaction, as it would also have been for them to have acted in hostility to the plaintiffs as agents for the vendors.

The oaths of the parties, both in their pleadings and their testimony, are upon this main fact directly opposed. Both the complainants assert the existence of this agency of their personal knowledge, and in positive and unqualified terms. Each of the three defendants asserts the contrary, with equal distinctness and emphasis. I shall defer whatever I may have to say as to the intrinsic relative value of these sworn statements until, by an examination of the evidence, the basis shall have been laid for a more correct estimate.

The strongest corroboration of the plaintiffs will be found in an examination in detail of the circumstances attending each of the transactions embraced in the complaint. But, before taking them

up separately for consideration, I desire to call attention to some points in the evidence having a general bearing upon all of the transactions:

GENERAL AGENCY.

First. Wm. M. Stewart, then as now U. S. Senator from Nevada, was at the time these purchases were made interested in them with plaintiffs to the extent of one-fourth. Subsequently, but in the same year, by agreement between him and Sunderland, the latter took these purchases off his hands, assuming all his obligations and succeeding to all his rights. Since then he has had no connection with plaintiffs in respect to this property, and has not, as he testifies, any interest in the event of this suit, nor in the subject-matter of the complaint. In his deposition his statements in reference to their agency are explicit and positive. He says defendants were the agents of plaintiffs in making these purchases; that plaintiffs had no other agents; that they relied upon defendants, and were guided almost exclusively by their advice; that while the purchases were being negotiated, he had frequent conversations with defendants, and that he never knew, heard, or suspected that they had, beyond their commissions, any interest themselves in any of these transactions, but supposed them in every instance to be acting as brokers for the plaintiffs, and solely in their interest.

Of the six persons having direct personal knowledge as to the relations of the parties in these transactions, Mr. Stewart alone is disinterested. A few years ago he would have been the only one qualified to speak of them as a witness. I know of no reason why his clear, unqualified statement should not now be accepted as conclusive in respect to this question of agency.

Second. John Bull was at the time of these transactions and for four years afterwards the bookkeeper and cashier for Kilbourn & Latta. Upon examination by plaintiffs he testified as follows (fols. 505, 506, 507):

Q. What did you know of the relations between the firm of Kilbourn & Latta and Sunderland, Hillyer and Stewart in the making of these purchases?

A. I never had any cognizance whatever of the negotiations for the purchase of this property at the time the purchase was agreed upon between the seller and this firm of brokers. I never was cognizant of these transactions. The first I knew of these transactions was when they came to be entered on the books. The firm of Sunderland, Hillyer & Co.—either one member or the other of it—furnished the money as it was required, and generally the payments were made out of their money that they furnished. They were in frequent communication with the firm. I used to see them often having conferences with the several members of the firm. The relations between them seemed to be very confidential. They paid in money to the firm generally when it was called for and did not take any account or cognizance of its disbursement at the time. I don't know that I know anything further about the relations existing between Sunderland, Hillyer & Co. and the firm of Kilbourn & Latta.

Q. Do you know whether Kilbourn & Latta were the brokers of Sunderland, Hillyer & Co. or not?

Mr. TOTTEN. I object to the question, because it calls for a legal opinion, whether they acted as such or not.

A. Well, I suppose that they were the brokers of Sunderland and Hillyer.

Q. State your reasons for so supposing.

A. Nothing except from a general knowledge of their business. Money was put into the hands of this firm and they were directed to buy property, and they went on and did buy property. I have always understood from the firm that the commissions would be paid by the sellers of the property, but when the sellers were unwilling to pay a commission then the firm of Sunderland, Hillyer & Co. were to pay the commissions.

Q. Did you ever know of the firm selling any property to Sunderland, Hillyer and Stewart; did you at the time?

A. No.

I do not claim that this testimony is of itself sufficient to establish the fact of agency. The witness says that he supposed defendants were brokers for the plaintiffs, and gives good reasons for so supposing. But the principal force of the testimony is not in the assertion of this opinion nor in the reasons given for it. Its chief value consists in the improbability that the defendants' theory of their relations to the plaintiffs should be true, and yet that Mr. Bull should not have known or suspected its real character. The defendants say that in all instances they acted openly as vendors or as representatives of vendors, and negotiated and bargained with the plaintiffs as ordinary purchasers, with recognized adverse interests. If so, there was no occasion for any concealment, much less for the practice of any deception in conducting the business. There was no reason for mystery in such a transaction. Except the parties interested, Mr. Bull was closer to these transactions than any one. He was constantly in the office, witnessed the daily intercourse of the parties, made all the entries, kept the cash accounts, and usually himself made the deposits and drew out the money for the required payments. While it was not essential that he should have been acquainted with all the details of this business, it seems inconceivable that he should not have known *on which side* of these important transactions his employers stood. He could only have been kept in ignorance by constant studied concealment. He could only have supposed he knew and been mistaken in the supposition by constant active deception. No honest motive can be suggested for either concealment or deception. That upon the fundamental point whether in these transactions the defendants were acting for the sellers or for the buyers, their confidential clerk should be kept in ignorance or led into mistake, can be only rationally accounted for in one way. The defendants were betraying the plaintiffs, and to do this successfully it was necessary to deceive Mr. Bull.

Third. The accounts themselves furnish strong internal evidence against the theory of defendants. The defendants assert that each of these purchases was a distinct transaction; that plaintiffs came to their office as ordinary buyers, and bargained and contracted with them as sellers separately for each individual parcel; that there was no general plan or arrangement contemplating a series of purchases, and no agreement or understanding connecting any one transaction

with any other, but that, as Mr. Olmstead testifies, each one might well have been the last. If this be so there was certainly no necessity, nor in fact any occasion, for a running account or for unsettled balances between the parties. Naturally each separate purchase would have been closed separately. The purchase price having been fixed by agreement, the amount required by its terms would have been paid by plaintiffs upon the reception of the title deeds. It would have been unusual and contrary to ordinary business methods for them to have paid more or for the defendants to have received less.

But this business was in fact conducted in a very different manner. The account rendered by defendants (see exhibit A, fol. 581) shows that this course was not pursued in reference to any one of the numerous transactions. From a period shortly anterior to the first purchase down to the completion of the last there was never a time when there was not an unsettled balance to the credit of the plaintiffs. The plaintiffs never paid to the defendants the exact amount or anything very nearly corresponding to the exact amount due on any single purchase. They made their payments in large sums and in round thousands. The first entry in the account is of a deposit of $5,000 by plaintiffs with defendants on May 18. This was nine days before any purchase money was paid on account of any of their purchases. May 24, three days before the completion of any purchase, they deposited $5,000 more. During the whole period covered by these purchases the defendants had in their hands, to the credit of complainants, a considerable unexpended balance, varying in amount, but rarely less than several thousand dollars. (Testimony of Olmstead, fols. 1207, 1208.) No account of any individual purchase or of any other character was rendered by defendants until all of the purchases had been completed. All this harmonized perfectly with the theory of complainants.

If the defendants were their agents to make purchases for them it was conformable to the ordinary course of business that these sums should have been placed in their hands at the times and in the amounts shown by the account. But on the theory of defendants it was an extraordinary departure from the usual mode of conducting business. Purchasers do not thus deal with sellers. The plaintiffs and the defendants were on defendants' theory business adversaries. Why should plaintiffs, proposing to buy, and of course proposing to buy as cheaply as possible, place money for this purpose in the hands of the very persons who were to be their antagonists and whose interest and business it was to sell as dearly as possible? Why thus commit themselves in advance to those with whom they expected to negotiate and bargain respecting values and prices? While I may not credit the plaintiffs with being the "shrewd operators" which Olmstead calls them, I cannot think them so ignorant of trading principles and practice or so destitute of trading instincts as to have thus "given themselves away" to their adversaries.

Fourth. From the very first the title to the property purchased was taken in the name of J. M. Latta, trustee, each deed conferring upon him unlimited authority to sell or encumber at his discretion. If the plaintiffs were adversaries in a business sense to the defendants, although it is possible, it seems to me highly improbable that one of the defendants should have been selected for a position involving such complete confidence. It was certainly a most curious preparation for entering upon negotiations to purchase property to first place in the hands of the proposed vendors, or their professed agents, an indefinite amount of purchase money, and then arrange that the title to such property as might be purchased from them should be placed in them, or one of them, with absolute power of disposition.

Fifth. In November, 1877, Kilbourn and Olmstead commenced a suit in the Supreme Court of the District of Columbia against Latta. Their complaint charged him with having defrauded them during the existence of the firm of Kilbourn & Latta by secretly making profits in certain real estate transactions which should properly have belonged to the firm. In his answer Latta denied that it was ever any part of the business of Kilbourn & Latta to deal in real estate on account of the firm, and his deposition is now on file in the Supreme Court of the District of Columbia (Equity, 5919). This deposition was taken long before any controversy had arisen between the firm and plaintiffs respecting these purchases. Mr. Latta's statement as to the busines methods of the firm, at least so far as the plaintiffs are concerned, may therefore reasonably be accepted as true. From this deposition the complainants in the present case introduced in evidence the following extracts (see plaintiffs' testimony, exhibit marked "Extracts, &c.," fol. 1697 *et seq.*):

Q. 59. What was Mr. Kilbourn's financial condition at the time Mr. Olmstead was admitted? [May, 1871.]

A. I know of nothing of any consequence that he held, and I knew that he owed, as I supposed, about $2,000. I have been told, anyway, that he did.

Q. 60. Did he have any means in excess of his liabilities?

A. I should think not.

Q. 61. What was Mr. Olmstead's financial condition at the time he was admitted?

A. I did not know of anything that he had at all.

* * * * * *

Q. 90. A letter of yours has been produced during the progress of this examination, dated 2d of August, 1871, in which this language is used: "We should crowd our purchases." What was meant by that?

A. It was meant that we should crowd the purchases we were authorized to make for others.

Q. 91. For whom at that time were you authorized to make purchases?

A. We were authorized to make purchases for the Real Estate Association, and I think, by Hillyer and Stewart; I don't know whether Sunderland had yet come in with them or not. It did not refer to purchases for members of the firm.

* * * * * *

Q. 96. Had the firm any resources from which to get money except its commissions?

A. None, I believe, unless the individual members of the firm put the money up, which they never did in any case.

* * * * * *

Q. 118. There has been a good deal said in the course of this case about certain real estate that was sold to Sunderland and Hillyer; will you explain about that?

A. I can only understand this from your question, that it refers to seven or eight pieces of real estate *bought really for Sunderland and Hillyer*, in May and June, 1872, but which *entered into the account* of Kilbourn and Latta and Olmstead, aggregating something like $18,000 or $20,000.

Mr. WILSON. That is what I refer to.

THE WITNESS. It *figures in the account* of Kilbourn & Latta, but was *really purchased for* Sunderland and Hillyer, and *turned over* to their account, and deeded to them within a few days afterwards, say, probably, ten, or fifteen, or twenty days afterwards.

* * * * * *

Q. 122. How many purchases that were made by the firm, if any, were made without knowing first what you were going to do with the property, and how you would get rid of it?

A. There were seven during the existence of the firm that were made for what you might call investment; all the others we knew just where we going to put them before we bought.

Q. 123. Do you remember what cash payments were made on those seven pieces?

A. $4,774.00. Those are the purchases made from the 13th of June, 1871, to June 7th, 1874, as investments.

* * * * * *

X-Q. 441. In stating in answer to the 95th question of your direct examination, that the firm had no capital at that time with which to make purchases, do you mean that the firm had not the means of making purchases, if it had desired to?

A. Yes, sir; I do.

* * * * * *

X-Q. 443. In that letter [written from Altoona, in May, 1872,] you recommend the advisability of large purchases by the firm for its own benefit. How were these purchases to be made if the firm hadn't the means of making them?

A. With the view of turning them over to Sunderland and Hillyer, knowing that that was one of the squares that they were talking about purchasing.

* * * * * *

X-Q. 447. In this letter you district the northwestern section of the city, for the benefit of the several parties named herein, and state "after the opportunity has been given each, and they decline, then the property can be offered any other; but first reserving the right to purchase ourselves." What did you mean by that?

A. It was contemplated to extend some time into the future, and did not alone contemplate that day, but to district the city off, which condition might run for six months or a year, and, in the event that we were able to purchase, we should reserve the right to purchase. It was laying out a plan which should extend unlimitedly as long as these people were authorizing us to purchase, and if we were in a condition to purchase, and I thought it advisable we should purchase.

Q. 446. What do you mean in this letter (referring to the Altoona letter of May, 1872, exhibit J. F. O., No. 1, fol. 1482,) by stating that "I would suggest getting the refusal for ten days instead of purchase, for Sunderland, Hillyer and Stewart, of lots 2 and 3, 15 and 16, in square 68, of Riggs"?

A. Because I did not want the purchase to be made, because it was likely to affect the property *that we intended to secure for Sunderland and Hillyer* in that neighborhood. I preferred *getting the refusal for them rather than purchasing for them.*

* * * * * *

X-Q. 451. To what extent were such purchases made?

A. I cannot state without some memoranda.

X-Q. 452. Can you not approximate the aggregate of the amount purchased?

A. Without being able to state definitely, I should think it was about $14,000 that they purchased for themselves.

X-Q. 453. You now allude, I presume, to purchases made by them at the time of the purchase, not having any particular disposition of the property in view, do you not?

A. Yes. Exclusive of the purchases that were made in view of turning them over to Sunderland and Hillyer; exclusive of the purchase that was made in

square 242, when it was purchased by the Real Estate Association, and finding that we could sell $33,000 out of $40,000, we sold it and took it *for the firm.*

* * * * * *

Q. 467. What do you mean by "when the firm was in a condition to purchase"?

A. When they had the money.

Q. 468. If you thought the purchase a very desirable one, did you not make the purchase when you did not have money?

A. Not for ourselves. No.

Q. 469. When you had an opportunity of placing it somewhere else?

A. *Then we took the money of the party* whom we expected to place it with when it was in our possession, as it was in several instances, and made the purchase and *turned it over* to them within a reasonable time.

And again:

X-Q. 470. Were there not instances when you had not money in your possession belonging to parties to whom you could sell it, and still you made purchases?

A. I think not; it may be possible that we might have had money ourselves, and not their money, but knew that we could get it whenever we drew for it, and thought we would make his purchases and use our own money. But the parties whom I specially refer to we knew that we could get the money from whenever we drew for it.

* * * * * *

Q. 490. In the list given by you, in answer to 119th question, as to when the Sunderland and Hillyer property was acquired and when conveyances were made to Sunderland and Hillyer, I cannot understand clearly from your testimony whether in that list you mean to include property which was purchased by the firm for Sunderland and Hillyer, and not for the benefit of the firm or of the individual members of the firm?

A. The *firm took a profit on it*, although it was property designated by Sunderland and Hillyer for us to purchase at a certain price. *We purchased it at a less price and took the difference as a profit*, but in every instance it was property which *we were authorized to purchase for them at a price beyond what we paid.*

Q. 491. Then, as I understand it, this was property which you had been authorized to purchase by Sunderland and Hillyer, for which *you were at liberty to go to a certain figure*, and, in point of fact, purchased the property at a less price and conveyed it to them *at the figure designated by them?*

A. *Exactly.*

X-Q. 492. Whose money was used in making these purchases?

A. Generally Sunderland and Hillyer's. As I say, there may have been some one instance where there was not enough money to their credit for that purpose, and we used other money, knowing that we could get the money by calling on them for it or drawing for it at any time.

X-Q. 493. You simply advanced the money for their benefit?

A. We did not advance the money generally; generally it was their money.

X-Q. 494. You say there may have been some few instances where they hadn't the money to their credit; in those instances you advanced the money for their benefit?

A. We advanced the money to make the purchases. *We took some of the benefit out of it ourselves.*

Again (fol. 1714).

Q. 527. Did Sunderland and Hillyer designate in advance which they desired you should purchase for them, or did they rely upon the exercise of the judgment of the firm?

A. They designated that lots anywhere along this front, or that front, or in this square should be bought at, say fifty cents a foot, for instance, and other lots at twenty cents a foot.

The above statements were made by Mr. Latta under the solemnity of an oath, and under circumstances requiring as much care and accuracy as did his answer and deposition in this case, which

they flatly contradict. If what Latta then testified is true, then it is not true, as he now says, that the only relation or the essential relation between plaintiffs and defendants was that of purchasers towards vendors. The firm of Kilbourn & Latta were engaged by plaintiffs *to purchase property for them*—that is what Latta then said as distinctly as it can be said in English. He even states, in part at least, the terms of this engagement. Sunderland and Hillyer designated the property which they wished to buy, and gave the firm *liberty to go to a certain figure.* This is not inconsistent with what the complainants themselves say. It is true that Latta does not seem to see any impropriety in the firm under this engagement buying this property at one price and turning it over to Sunderland and Hillyer at another. But this is simply because, as the record demonstrates, Latta is singularly deficient in the quality of moral sense. If the court has any doubt respecting this moral obtuseness, it will be removed by reading the following extract from the same exhibit:

Direct examination:

Q. 120. State the facts in relation to the purchase and sale of the property in square 242?

A. That property *was bargained for by order of the Real Estate Association.* There was delay in the execution of the deed on account of it having to go back and forth to Europe twice, and in the meantime we found that we could sell the Vermont avenue front at about 25 per cent. profit, and did bargain it away. We then took that portion of it ourselves and turned over the rest of it to the Real Estate Association, so that an item of $40,000 of Kilbourn & Latta is comprised in that. Thirty-three thousand dollars of it was sold before the deed returned, and we never had invested a dollar in it.

Q. No firm capital was used in it?

A. No firm capital was used up to that time.

* * * * * *

And on cross-examination:

X-Q. 511. In answer to the 120th question relative to the purchase and sale of property in square 242, as I understand your testimony is substantially this: that you were authorized to make that purchase by the Real Estate Association, and pending the delay in the execution of the deed (which had to cross the ocean and back twice) you found you could sell the Vermont avenue front at an advance of some 25 per cent., and took that front for the benefit of the firm, and the balance for the Real Estate Association. Is that the case?

A. Took it for the benefit of Kilbourn, Latta and Olmstead; yes.

Q. Did it occur to you at that time that there was anything improper in that transaction?

A. There were considerations about it (which I am not at liberty to divulge because it affects others) that relieve it of any impropriety.

I think the reading of the foregoing extracts from this deposition must convince every one—

1st. That Sunderland and Hillyer did not approach the firm of Kilbourn & Latta for the purpose of buying property *from* the firm, either as owners or agents for others.

2d. That they did employ the firm on some terms to purchase property for themselves (complainants).

3d. That they placed and kept funds in the hands of the firm for this purpose.

4th. That plaintiffs designated the property which they wanted to purchase.

5th. That the firm purchased the property so designated with the funds of plaintiffs.

6th. That they took a profit to themselves on these purchases by charging to plaintiffs prices therefor greater than those actually paid by the firm.

7th. That in these purchases the defendants, whatever they may have professed, did not in fact act as agents for the vendors.

I will make no further comment upon this testimony than to copy (so that the two may be seen in immediate juxtaposition) that portion of the answer of Mr. Latta, which covers the same subject:

The defendant avers the truth to be that the sole and only foundation for the charges and averments contained in said fourth paragraph of said bill of complaint, is the following that is to say:

Said firm of Kilbourn & Latta had on hand for sale a large quantity of lots and pieces of property in the northwest quarter of the city of Washington, of which fact said complainants had knowledge; and it is true that the said firm of Kilbourn & Latta did call the attention of said complainants and said Stewart to various parcels of property in said quarter of said city, which said firm of brokers had for sale, and stated the price asked for each to said complainants and said Stewart, or one of them, with a view to selling said lots and pieces of land to said complainants and said Stewart, and from the numerous properties so mentioned and pointed out to them, said complainants and said Stewart did select and purchase, on their own judgment, a small portion of them, on each of which pieces of property they made their own offer, *and those offers were submitted by the firm of Kilbourn & Latta to the owners of such property, whose brokers said firm of Kilbourn & Latta were*, and when said parties came to an agreement, the purchase was made by the said complainants and the said Stewart, of or through said firm of Kilbourn & Latta, and the commissions of said firm of brokers were paid by the vendors *for whom said firm acted.*

Sixth. On the 26th of May, 1872, Mr. Latta wrote from Altoona, Pa., a letter to his partners (fol. 1482), from which the following is an extract:

It has occured to me that, in order to avoid conflict of interests as far as possible, we should district the territory in which we would give each party the first option of property; and I should say as follows:

Pool, Vermont Avenue and Circle (Rhode Island Avenue).

Geo. Taylor and Chipman, beyond the Circle of Rhode Island Avenue.

Stewart, Hillyer, and Sunderland, Connecticut Avenue and Circle, and property immediately in that radius, say from O street north, when west of New Hampshire Avenue, east of New Hampshire Avenue as far down town as they choose, even including 164, over as far east as 14th and out to Boundary. Dr. Stearns, south of O (after 69), and west of 20th to the Rock Creek, and south to Pennsylvania Avenue, and to Chipman, the property around the new grounds of the New York Avenue and 18th street. By doing this we shall avoid any unpleasant feeling of jealousy. After the opportunity has been given each and they decline, that the property can be offered to any other; but first reserving the right to purchase ourselves, and limiting the time for decision to twenty-four hours' consideration, and in conformity with this view, I would suggest that, if Stewart, Hillyer and Sunderland should not decide to take 151, or make an offer on it to-morrow, you telegraph me at once at Bedford, and I will telegraph an offer from Dr. Stearns, if he thinks favorably of it. We had better put ourselves in shape to take square 153, if

I can get it at 18c., which I will probably know within two days after Corcoran's arrival.

I would suggest getting the refusal for ten days, instead of purchasing for Stewart, Hillyer and Sunderland, of lots 2 and 3, 15 and 16, square 68, of Riggs. If sold he might say something about it to Bright, or some one else, and effect unfavorably some negotiation.

Of course, no deeds go on record until we get ready. Hand Taylor a copy of his letter of instructions to us about sale of 115, that he may have it fresh in his memory if questioned.

* * * * * * *

Yours truly,

(Signed) J. M. LATTA.

This letter deserves careful attention. It must be read bearing in mind that it is a confidential communication from one of the defendants to his partners and evidently intended for no other eye than theirs. It was written just about the date of the first purchases by plaintiffs and Stewart.

First, let us see how it harmonizes with the extract from the answer above quoted. According to that extract the defendants were agents for certain owners who had placed their property in the hands of the firm for sale. They were, therefore, bound to act in the interest of these vendors and obtain for them the most advantageous terms. But the persons mentioned in the letter, and whom it purposes to distribute geographically, were not sellers but buyers. That is, they, as agents for vendors, propose to limit as to location the persons coming to them to purchase. This on the face of it is an absurdity. No proper and reasonable motive for it can be suggested. They had no right to suppose that they could, if they wished, control these buyers in this respect. It was in violation of the duty which they owed to their principals, the vendors, for its only effect would be to diminish competition among buyers. "By doing this," says Latta, "we should avoid any unpleasant feeling of jealousy." Jealousy between whom? Beyond doubt between the persons previously named—that is, the several buyers. What had Kilbourn & Latta to do with the jealousies between these buyers if their relations to them were as stated in the answer? It is the interest of the seller to stimulate rather than discourage jealousy among buyers.

It is only by accepting as true the opposite theory—that of complainants—that this letter becomes intelligible. The firm had been employed by the several persons named as their agents, to negotiate purchases for them. Some, if not all of them, had put money into the hands of the firm for this purpose. The obligation of the firm to each was the same—that is, to secure property at the lowest price possible. The cause of possible jealousy feared by Mr. Latta was that some one of them might ascertain, or be led to believe, that another had received better bargains than himself. The more remote the purchases of the several buyers could be kept from each other, the less opportunity there was for comparison and the less chance of dissatisfaction. Knowing that each of these purchasers relied largely upon the judgment and advice of the firm, it was not unreasonable

to suppose that by a judicious system of recommendation the plan of territorial distribution could be carried out. If the firm had intended justly to fulfill their obligations to all these purchasers, then the plan, by its tendency to prevent competition and conflict, might have been to the general advantage of their principals. If, as the evidence shows to be the fact, they intended to manage these negotiations, not primarily in the interest of their principals, but in their own interest, then nothing could be more favorable to the secresy necessary to effect this purpose than a thorough isolation of those to be deceived.

In order to understand what is meant by Mr. Latta in speaking of "offers" to be made, first to one and then to another, we must bear in mind that as to the plaintiffs certainly, and probably as to the others, the firm were to conduct the negotiations to the point of ascertaining the lowest price, and this in all important cases was to be submitted to the principals for final approval or rejection. We must also remember that Kilbourn & Latta did not intend to report to plaintiffs the lowest price, but a price above this, which, if ratified by plaintiffs, would leave a profit for themselves. (See Latta's testimony in former case, ante, p. 30.) The offer to be made was to be nominally that of the vendor as his lowest price, but really this sum augmented by a profit to be realized by the firm. I confess to not seeing clearly the meaning of the phrase "but first reserving the right to purchase ourselves," &c. Mr. Latta's explanation of it (ante, p. 30, x-q. 447) is not itself very clear. But it certainly excludes all idea that the firm was to act, or profess to act, as agents of the vendors. The reservation was to be made with these several buyers. What need of a reservation if they were not their agents, proposing to negotiate in their interest? If the defendants had not, so far as plaintiffs were concerned, the right to purchase at their pleasure without any reservation, then it was because they had agreed to negotiate for the purchase on behalf of plaintiffs, and were bound to report correctly to them the result of these negotiations. What is meant by the clause "we had better put ourselves in shape to take square 153," &c., is fully explained by Mr. Latta in his testimony in case of Kilbourn and Olmstead *v.* Latta (fol. 1705). There is one clause in this letter which would seem to be decisive as to the relations of the party: "I would suggest getting the refusal, *instead of purchasing, for Sunderland, Hillyer and Stewart,* of lots 2, 3," &c. There is no ambiguity in this language. It is impossible that it could have been used unless this firm was acting in the purchase of property on behalf of Sunderland, Hillyer and Stewart. One further consideration and I shall have done with this letter.

One of the parties whose purchases the letter proposes to localize is the "Pool" or Real Estate Association. The defendants say themselves that they were the confidential agents of this association for the purchase of property. There is no reason to suppose that there was any difference in the relation of the firm to the several parties

among whom the defendants were to partition the northwestern section. The letter proposes the same policy and method of dealing for Sunderland, Hillyer and Stewart as for the Pool. As they testify themselves they were the agents of the Pool for purchase, it is difficult to believe that this was not also their relation to Sunderland, Hillyer and Stewart.

Seventh. I now ask attention to another letter, not less important than the Altoona letter. Stewart and Hillyer ceased buying in the latter part of June, 1872, but Sunderland continued purchasing, individually, for several months thereafter. He made no new or different arrangement with Kilbourn & Latta. He says he continued to purchase upon the same terms and with the same understanding as before Hillyer and Stewart withdrew. (Record, fol. 415.) On this point Olmstead testifies as follows (cross-examination, fol. 1140, q. 413):

Q. Was there any different arrangement made in reference to purchases for Mr. Sunderland after Sunderland, Hillyer and Stewart had stopped buying than that which had existed previously between the firm and Sunderland, Hillyer and Stewart?

A. I do not remember that there was ever any arrangement made by anybody at any time.

Q. Well, did you purchase the property for Mr. Sunderland under the same conditions, so far as the relations of Kilbourn & Latta were concerned to the purchase, as those which existed between the firm and Sunderland, Hillyer & Co. when they made purchases?

A. I do not know of any difference in their relations whatever.

In the early part of July Mr. Sunderland made a trip to San Francisco via New York. During his absence he received from the firm the following letter:

WASHINGTON, D. C., *July* 13, 1872.

DEAR SIR: Bright is here and says he will take $20,000 net to him for square 138. The *taxes against it and commissions* will make it amount to $26,500, or about 37½ cents per foot. There is in it 70,695 square feet. He wants $10,500 cash and balance in one and two years, with 7 per cent. interest. We have the refusal to the 1st of August. Shall we take it? *I do not hesitate to say you should, but decline to take the responsibility.* The price at which I purchased [proposed to purchase?] it before you went away was $25,000, one-third cash, balance one and two years, at 7 per cent. You can telegraph reply. We can get seven-eights of square 65—all except that marked black. The extreme point will fall into your hands this fall. Lot 2 cannot be had at present. The taxes on 1 lot are more than the lot is worth to the owner, and he will let it be sold. That will take about $7,000.

We have bought two lots in square 69, for which we have paid out for you $2,300. *To cover all will take about* $20,000, *and as we want to be prepared for anything else which may drop in our way, you had, perhaps, better send us* $25,000.

Notwithstanding the hot weather, real estate still goes up and there are more purchasers than sellers.

Very truly yours,

KILBOURN & LATTA.

TO JUDGE THOS. SUNDERLAND,
In the care of the Bank of California, San Francisco, Cal.

Also the following:

WASHINGTON, *Aug.* 2, 1872.

JUDGE SUNDERLAND,
San Francisco, Cal.:

DEAR SIR: Your telegram was duly received. We found it would cost you $250, or one per cent., to draw on you through the ordinary channels, and therefore took

the liberty of asking you to place the funds in New York to our credit. A telegram from Messrs. Lee & Waller, received yesterday, advised us that $25,000 was in their hands subject to our draft, and we accordingly drew on them for that amount.

Davis, who owns southeast quarter of square 92, *won't take less than* 40 *cents.* We had a loan on it of $2,000, at ten per cent. interest, due July 21, *and thought we might press him to take a decent price* by calling for it, but he said he would borrow the money in another place before he would consent to take less than 40 cents.

We have let the money lay, and have the refusal of the lot until we can hear from you. He has 17,958 square feet, and his lot completes the square. He wants $3,183.20 cash, $2,000 in two years, and $2,000 in three years, with six per cent. interest, payable semi-annually. What shall we do about it.

We have bought that part of square 67, *owned by Mix and Cassin, viz: Lots* 1 *and* 2, *at* 30 *cents; part of* 6 *and all of* 8, 12, 13, 14, 15, 16 *and* 19, *at* 25 *cents, one-third cash, balance in one, two and three years, at six per cent. interest, payable semi-annually, amounting to about* $21,000—$7,000 *cash.*

We have sent deed to Bright for execution for square 138.

Truly yours, KILBOURN & LATTA.

The italics in these letters are mine, and I shall make no other comment upon them. They are too explicit to need or bear comment. No one can read them and not *know* what the relations of these parties were. They flatly contradict the sworn statements of defendants, and fully corroborate the plaintiffs. From beginning to end, in their whole tenor—in what is said, and in the manner in which it is said—they are consistent with nothing else than the existence of that confidential trust relations between plaintiffs and defendants asserted in the bill and denied in the answer.

COMMISSIONS.

In the accounts of purchases rendered to plaintiffs by defendants, the former, in most instances, are not directly charged with brokers' commissions, and this circumstance is relied upon by defendants as disproving the relation of agency in respect to these purchases. Ordinarily the payment of commissions to a broker by one of two parties in a transaction of purchase and sale would indicate the existence of the relation of agency between each party and the broker. So, ordinarily, the non-payment of commissions by one of such parties would indicate the non-existence of this relation. But this presumption is by no means conclusive. The nominal payer may not be the real party bearing the burden of its payment. The payment is not inconsistent with an express agreement or understanding negativing the relation of agency. If a broker goes to A, the owner of property, representing himself as the agent of B for its purchase, and requests and obtains A's lowest price upon a mutual understanding that out of that price the brokerage commission is to be deducted, no one would suppose that this would create any relation of agency between the broker and A, or in any way relieve the former from his obligation to act in the interest of B. Or if, after A has fixed his lowest price without intending to pay a commission the broker should report to him that his principal would pay that price upon the condition that A should pay the commission, and the latter should

assent to this payment, this would raise no presumption of agency. Or if the broker, being employed by A to sell the property to the best advantage, obtains and reports to his principal an offer from B, which the principal says he will accept, provided the purchaser will pay the brokerage, and B, on being informed of this, agrees to purchase on these terms, the payment of commissions by B would in no way affect the relations or obligations of the broker. So if, as is not unfrequently the case in practice, by agreement each party pays half the commissions. It will not be suggested that in any of these transactions there is any shade of immorality or impropriety. Nor, in fact, is there anything unusual in the commissions being paid by the party toward whom the broker acts adversely. (See testimony of B. H. Warner, a broker, called as an expert by defendants—fol. 947, 948, q. 81 and 82). However it might be with other brokers, it is certain that with the firm of Kilbourn & Latta the payment of commissions was a fact of no significance in determining the question of agency, as the following examples will show.

They allege in their answers, and testify in their depositions, that they themselves purchased square 115 from the "Institution for the Education of Colored Youths," for $40,000. They also testify, and their books show, that the Institution, &c., on this sale paid them a commission of $1,000, or 2½ per cent. I do not think they will claim that they were the agents of these vendors in making a sale to themselves.

Again, if there ever was any person or association of persons, between whom and the firm of Kilbourn & Latta the relation of principal and agent in its fullest sense existed, it was the Real Estate Association. From its first formation they had its funds in their hands to purchase; they were, as they testify, entitled to half its profits—they were invested by it with such plenary discretion that they could negotiate and conclude a purchase on its behalf without consultation with any of its members or officers. (See testimony of Kilbourn, fol. 887, q. 497, *et seq.*) Yet, on a purchase in October, 1871, through the firm by the Real Estate Association of square 156, from Thomas Young, their books show, and they admit in their testimony, that they charged and collected of Thomas Young on this purchase a commission of $4,673. At regular rates (see post p. 42), and the firm had no right to charge beyond these, their commissions would have been only $1,708. Even recognizing their right to take the commissions from the vendor, the excess of $2,965 was fraudulently obtained. It was not a commission, but a deduction from the purchase price, of which the association, and not the brokers, was entitled to the advantage. But had the charge been honestly made as to amount, it is a clear recognition that the payment by a vendor of brokerage commission to this firm was in no way inconsistent with its agency for the purchaser.

Mr. Latta in his letter of May 26, 1872 (exhibit J. F. O., No. 1, fol. 1482), to his partners, giving instructions in reference to a transac-

tion of purchase and sale, says: "Commissions on each side, $87.50." Whose agents were the firm in this transaction?

Again, from Latta's letter of July 13, 1872, above quoted, it is certain that the firm were the agents of plaintiff Sunderland in the purchase of two lots in square 69. They purchased those lots while he was absent in New York. They used their own discretion in making the purchase and fixing the price without consultation with him. No one can read that letter and doubt for a moment that, in respect to the purchase of these two lots, the defendants sustained toward Sunderland precisely that close fiduciary relation which the plaintiffs assert they sustained toward them in respect to all the purchases. Yet on this purchase no commissions were charged to Sunderland; that is, they were not *directly* charged to him, but appear from their book entry to have been paid by the seller. (Exhibit C, fol. 586.)

Again, the defendants say that all the lots purchased by plaintiffs in square 158 passed through the hands of the firm as intermediate purchasers. Lot 3, square 158, as they testify, was bought by the firm from P. H. Ray and then sold by the firm to plaintiffs, the conveyance being made direct from Ray to plaintiffs' trustee. Yet on this transaction (testimony of Olmstead, fol. 1127) a commission of $250 was charged to Ray, the defendants' vendor.

These examples (and more might be added if necessary) are certainly sufficient to show that the apparent charge by this firm of commissions to a seller in no way implied that they were acting as agents for such seller.

Between the 26th day of May and the 26th day of June, 1872, a period of one month, the defendants charged on their books, as commissions on sales made to complainants, $14,871, and within a short time afterwards, Hillyer and Stewart having withdrawn and Sunderland continuing to purchase alone, they received as commissions on sales to him, in round numbers, five thousand dollars. By whomsoever nominally paid, this $20,000 was in fact made for the firm of Kilbourn & Latta by the complainants, and by them alone. With the single exception of square 156, none of this property was at the time in the hands of the firm for sale. The owners did not come to them to sell, but they went to the owners to buy. Their first communication with the vendors was after they had received from complainants the order to purchase, and the subsequent communications had no other scope than to ascertain at what price the owners would sell. The vendors reposed no confidence in the firm and the firm had no engagements with and incurred no obligations towards the vendors. Under these circumstances, the payment of a commission by the seller was simply a diminution to that extent of his sale price. The nominal sale price was not the real one—that is, it was not the lowest price which the seller was willing to take, but exceeded it by the amount of the commission. The commission, though charged to the seller as matter of form, was in fact paid by the buyer.

The form of the transaction was a new method of bargaining. Every trading man will recognize that often when a seller has fixed his price it may be easier to induce him to pay the broker's commissions than to make a square deduction of the same amount from the fixed price. This is precisely what was said to complainants by Kilbourn & Latta. They represented that in negotiating for the purchase of a piece of ground the owner would generally fix his price at so much per foot, and that frequently, while he would not take any less per foot, he would agree in case of a sale at that price to pay the commissions. They agreed in such case to make no additional charge for brokerage to the plaintiffs. It was not understood or suggested that they should profess to the seller to act in his interest or otherwise than adversely. If in any case they did make such professions to the seller, then they practiced a fraud upon him. If they did not, then the transaction was entirely legitimate and in strict conformity to their agreement with the plaintiffs.

Again, Mr. Latta says in his answer that the firm never acted as agents for plaintiffs in any of their purchases. In his deposition (fol. 256) he says:

> They (the plaintiffs) never paid us anything for a commission or for our judgment or experience in the purchase of this real estate.

And on page 4:

> Q. Who paid the commissions on these sales?
> A. The vendors, *invariably*.

Yet from the accounts rendered by the firm to plaintiffs (exhibits C and D, fols. 586, 592) it appears that in four of the transactions, bearing date respectively, June 18 and June 28, August 5, 1873, and January 6, 1874, commissions aggregating $2,039 were directly charged to and paid by the plaintiffs—that is, plaintiffs were charged in the books of the defendants, in these cases, first, with the purchase price, and then with commission (5 per cent.) on this amount. Two of these were joint purchases of plaintiffs and Stewart, and two individual purchases of Sunderland. Now I wish to ask, were Kilbourn & Latta agents for plaintiffs in these transactions? If not, why did they charge them these commissions? If they were complainants' agents in these purchases, how escape the conclusions that they were so in the others in the absence of any proof distinguishing them? There is no such proof. As the dates show, these transactions were independent of each other. They occur indiscriminately between intervening purchases. Is it probable that the relation between plaintiffs and the firm shifted from time to time; that one day the firm was their trusted agent to buy for them as cheap as possible, and another their business adversary to sell to them as dearly as possible? There is nothing in the evidence to warrant such a conclusion.

The only reasonable explanation of this charge of commissions in some cases, and the absence of a direct charge in others, is, that plaintiffs have correctly stated in their bill what the defendants said to

them upon this subject of commissions, and that when they rendered to them the account, they expected plaintiffs to understand that whenever commissions were not charged they had been paid by the seller as a reduction of his sale price.

But although the books of defendants only show $2,037 directly charged to plaintiffs as commissions, this is not all the commission actually paid by them. Square 195 was purchased by plaintiffs from the late Geo. W. Riggs. In that purchase Colonel J. G. Berrett was employed by plaintiffs to aid Kilbourn & Latta in the negotiations, it being represented that on account of his relations with Riggs his services would be valuable. For these services plaintiffs agreed to pay Berrett $1,000. The entry of this purchase on the books of the defendants is as follows:

> Real estate account to lots in square 195, bought of Geo. W. Riggs & Co.; lots 11 to 25, J. M. Latta in fee, $52,500, sold to Sunderland, Hillyer & Co.; Latta's note date June 3, 1872, payable in three years, interest 6 per cent., payable semi-annually, $40,000; commission account, $1,500; cash paid J. G. Berrett, $11,000.

The $11,000 paid Berrett included his commission and the cash payment of $10,000 to Riggs. The entry made by Mr. Riggs (since deceased) in his business journal is as follows:

Riggs & Co.	Dr.
To lots in square 195:	
12th June. Sold to J. M. Latta lots 11 to 25 for $52,500, less $2,500	$50,000
Less notes for six years	40,000
	$10,000

Olmstead in his examination in chief (fol. 1008½, q. 45), says distinctly that the plaintiffs employed this firm (Kilbourn & Latta) to negotiate the purchase of this square. In his cross-examination, also (fol. 1038, q. 24), he testified as follows:

> Q. Did the firm of Kilbourn & Latta act as agents or brokers for Sunderland, Hillyer and Stewart in any transaction of purchase of real estate in the months of May and June, 1872?
> A. I think we did.
> Q. In respect to the purchase of what property?
> A. Square 195; we acted as the agents of Sunderland, Hillyer & Co. possibly in one or two other pieces; I do not remember now distinctly; they did not pay us anything for it.

Kilbourn also (fol. 854, x-q. 384) says that the firm did not to his knowledge act as agent for the seller, Mr. Riggs. It is certain, therefore, that in this transaction the defendants professed to act as agents for plaintiffs and that they neither were nor professed to be the agents of the seller.

From the form of the entry in defendants' books, it would appear that the purchase price of this property was $52,500—the cash payment $12,500—that out of this Riggs paid Kilbourn & Latta $1,500 commissions and directed them to pay Berrett $11,000. But this is not the fact. The actual purchase price of the property was $50,000. This is what Riggs asked, and just what he obtained. He paid no

commissions. If he had paid them, it would have been so entered on his books. The entry which he did make is somewhat peculiar. It was probably made on the suggestion of Mr. Latta, or one of defendants, that they would prefer that the purchase price should be nominally $52,500. However this may be, the entry as made expresses the truth. The purchase price was $52,500, less $2,500—that is, $50,000. The $2,500 could not have been a commission paid by Mr. Riggs. Because—

1st. The entry in Mr. Riggs' books says, "sold to J. M. Latta," and the deed was made to Latta, not as trustee, but as the first entry says, "in fee." Latta is, therefore, regarded by Riggs as the real purchaser, and this is entirely inconsistent with a payment of commissions to him or his firm on the sale.

2d. This $2,500 is, as Olmstead in his testimony admits, made up of two items—$1,000 paid to Berrett, and $1,500 retained by Kilbourn & Latta. But it is a conceded fact, testified to by both defendants and plaintiffs, that Berrett was the plaintiffs' agent, specially employed by them to negotiate this purchase in their interest. Riggs, therefore, could not have owed or paid him a commission, nor have regarded the entry as covering a commission due from himself to Berrett. Neither, then, could he have supposed that it covered a commission due from him to Kilbourn & Latta, for he treats the $2,500 as a gross sum.

3d. The regular rates of brokers' commissions at that time (1872) are stated alike by Olmstead and Warner; they were 5 per cent. on the first $2,000; 3 per cent. on the next $3,000, and 2½ per cent. on all above $5,000. (Fol. 1299 and fol. 950). At these rates the commissions would have been as follows: purchase price $52,500, commission, $1,278.50; purchase price $50,000, commission, $1,216. Some persons Kilbourn & Latta might deceive and overcharge, but not Mr. Riggs. He did not pay $2,500, nor even $1,500, when the regular rates allowed only $1,216.

4th. On the books of defendants this purchase price is set down at $52,500, but, as they admit, this covered and included the $1,000 commission paid to Berrett; it was, therefore, not the real purchase price. If it was enlarged to include Berrett's $1,000, it must have also been enlarged to include their own $1,500.

There is but one way to explain the amount of $1,500 commission charged. Although the regular rates were as above stated, defendants, in every case of direct charge to plaintiffs, charged 5 per cent., without reference to the amount, thereby nearly doubling their commissions. They did the same, as the evidence shows, with the Real Estate Association. Taking $50,000 as the purchase price, 5 per cent. thereon would be $2,500. As Berrett had been employed to assist, and had really taken the principal part, in the negotiations, Kilbourn & Latta permitted his fee of $1,000 to be deducted from what they would otherwise have charged. I may seem to have dwelt at unnecessary length on this transaction, but it seemed to me

best to *demonstrate* that in this, one of the most important of plaintiffs' purchases, the commissions, though appearing from the book entry to have been paid by the seller, were actually paid by plaintiffs, and the fact concealed by the entry of a fictitious purchase price. It is fair to infer that what was proven to have been done by them in this case was done by them in others where extraneous proof is not attainable.

Again, the entry on defendants' books as to square 155 is as follows:

Real estate account to George Burgess, square 155, sold to Sunderland, Hillyer & Co., deed dated June 7, 1872, James M. Latta, trustee, $72,970. Sunderland, Hillyer & Co., to real estate account for the above square, bought of Burgess and Orme: Commission account, $5,243.84; cash paid in for first note and accrued interest, $10,026.81. Paid Geo. Burgess $2,667. Examining the title, $60, ditto, stamps and deed, $13.50. Recording deed, $1.50. Sundries, $4.00. To balance, $13,070.80.

From this it would appear that the purchase price was $72,970, and that Burgess paid as commissions $5,319.55. But in fact, as defendants admit, he paid no commissions. He sold the property, not for $72,970.30, but for $67,650.65. (Testimony of Burgess, fols. 558, 559.) Assuming $72,970.30 to be the real purchase price, the commissions of defendants at the regular rates would have been $1,889.25. Even at 5 per cent., the special rate charged to plaintiffs, they would have been only $3,648.50. In fact this is not a charge of commissions at any rate or on any basis. The amount entered as commission is the difference between the purchase price actually paid to Burgess and Orme and the amount charged by defendants as purchase price to plaintiffs. This the defendants admit, and attempt an explanation which I shall consider hereafter. My present purpose is only to point out another conspicuous instance in which the charge of commission is a fiction, when, though apparently paid by the seller, it was in fact paid by the purchasers by an increase of the actual purchase price.

I shall hereafter state the facts in relation to square 156, and it will appear that the firm were interested, by their own admission, to the extent of a one-half interest in its sale to the plaintiffs, that they in fact took all the profits, and that the $4,521 charged as commissions was nothing else than an addition to the purchase price charged to plaintiffs, and in fact paid by them. Without citing more examples, I make the broad assertion that there is not in this record proof of a single transaction in which commissions were paid to the firm of Kilbourn & Latta by the seller under such circumstances that they could by their own showing have acted as the agent of such seller.

I have now said all that I wish to say on this subject of commissions. When it is shown that the defendants charged commission to the vendor when they themselves were the purchasers, as in square 115 and square 158; that they charged double commissions to the vendors when they were secretly interested as purchasers to the extent of one-half of the profits, and also occupied towards the other purchasers

the relation of confidential agents, as in square 156; that they took commissions from both sides, as appears from the Altoona letter; that where they acted professedly as agents for plaintiffs, to determine the propriety of the purchase and fix its terms in the plaintiffs' absence, they charged commissions to their vendors, as in square 69; that they entered upon their books a commission as paid by the plaintiffs' vendors when, in fact, it was paid by the plaintiffs, and concealed under an entry of a fictitious purchase price, as in square 195; that they charged as a commission to the vendor a sum more than double that to which, under any circumstances, they could have been entitled, and which, in fact, was no commission, but a difference between the real purchase prices and that charged by them to the plaintiffs, as in square 155, nothing more need be shown or said to demonstrate that with this firm the charge or payment of commissions implied nothing respecting their engagements or obligations as brokers or agents. If an honest broker cannot, acting as agent for one party, procure the other party to pay his commissions, then the defendants are dishonest. If he can, then the ethical dissertation on this subject in the amended answer and the expressions of virtuous indignation indulged in, from time to time, by counsel in respect to it, are only a waste of language and sentiment. If there was anything wrong in these transactions, it was not in the agreement, but in the methods of the defendants in executing it. I conclude upon this point with two quotations from the testimony of Mr. Olmstead. Having called his attention to the direct charges of commission to Sunderland, he is asked (fol. 1142, 1143, q. 422):

Q. When you did charge him commissions you were acting as his agent, were you not?
A. *Perhaps we were and perhaps we were not.*

And, again, when pressed on cross-examination to explain the charge of commissions to the vendors of square 115, when the firm were, as he had testified, the purchasers, he says (fol. 1089, q. 208):

It was our habit sometimes to get the price of a piece of property and see if the parties would sell it for that price and allow a commission, and then buy it in that way.

Fourth. I now propose to take up separately the purchases of which the bill specifically complains. It is not likely that these are the only ones in which plaintiffs were in fact defrauded, but they are those in respect to which, at the time of filing the bill, the plaintiffs were able to obtain sufficient proof, and first—

SQUARE 115.

The following facts are not denied: On the 25th day of May, 1872, and for several years prior thereto, this square was owned by a charitable corporation—The Institution for the Education of Colored Youths. On that day a deed was executed by the corporation conveying the premises to James M. Latta, trustee. The considera

tion expressed in this deed was $40,000, of which $8,000 was cash, and the balance in notes secured by deed of trust on the property. This deed was not seen by the plaintiffs, and was not put on record for several months after their purchase. On the 30th day of May, the cash payment, $8,000, was made to the corporation, as appears from the check in evidence given by the firm of Kilbourn & Latta therefor (fol. 1264). On the same day, the following entry was made in the books of defendants:

May 30th. Real Estate account. Institution for the Education of Colored Youth. Square 115, sold George Taylor; deed dated May 25th, 1872; James M. Latta, trustee, $40,000.

George Taylor, to real estate account, to the above square, bought of Institution for Education of Colored Youth, $40,000.

Real Estate account, to George Taylor, square 115, sold Sunderland, Hillyer & Co., deed as above, to J. M. Latta, trustee, $65,000.

Sunderland, Hillyer & Co., to real estate account, for the above square, bought of George Taylor, $65,000.

George Taylor, to Sunderland, Hillyer & Co., for the encumbrance assumed, note of James M. Latta, trustee, dated May, 1872, payable on or before 4 years, interest 6 per cent., semi-annual, $32,000; two notes to same of $6,500 each, dated May 30th, 1872. Commissions $1,000.

(This entry was procured by an order of the court directing its production after a refusal by defendant Olmstead to produce it.)

The defendants paid the full amount charged to them in this entry; that is, cash, $20,000, and notes for deferred payments, $45,000—in all $65,000. The amount actually received by the corporation was $40,000, less $1,000 for commission. The difference, $25,000, besides this $1,000 commission, was appropriated and retained by the defendants. On the same day two notes were made for $6,500 each, signed J. M. Latta, trustee, and payable to George Taylor. On that day the defendants had in their hands funds of the plaintiffs for the purchase of property largely in excess of the cash payment made to the corporation. No other deed than the one above mentioned was ever executed to or for the plaintiffs; and under that deed Latta for several years held the property, as trustee, for them. George Taylor had no interest in the property or in the transaction. The only act done by him was to indorse, without recourse, the notes in which he was the nominal payee to Kilbourn & Latta as soon as they were made. But one trust deed was executed by Latta to secure the deferred payments, as well the $32,000 note to the corporation as the two $6,500 notes to Taylor.

Upon these admitted facts, the only question which can arise is, whether in this transaction the defendants were obligated by their engagements to act as the agents and in the interest of the plaintiffs. The agreement of agency being established, the $25,000 taken by the defendants was an illegitimate profit, under either one of the two possible hypotheses as to the real character of their dealings. If they, in fact, purchased for the plaintiffs, and misrepresented to them the price at which the purchase was made, their liability is clear; or, if they in fact purchased for themselves, and sold to plain-

tiffs without disclosing to them the fact of their ownership, this was a breach of trust for which their liability is quite as clear. There can be no defense which has not for its basis the proposition that there was no fiduciary relation between the parties. It is not claimed that there were any special circumstances distinguishing this transaction from the numerous other purchases made by plaintiffs through defendants. If, therefore, there was any general employment of defendants to act as agents for plaintiffs in making purchases, there is no ground for excluding this transaction from the operation of such employment. I have already considered the evidence tending to establish, and as I think fully establishing, the existence of this general relation. I wish now to call attention to some peculiar features of this transaction bearing upon the same proposition.

1st. The amount of profit realized by defendants on their alleged purchase and resale is, in itself, a suspicious circumstance. The corporation did not agree to sell the property, or offer it for any price, until the 15th day of May, 1872. (Testimony, fol. 542.) The transaction was not actually closed by payment of the cash portion of purchase price until the 30th, the date of entry of sale to plaintiffs. Mr. Olmstead says that the purchases by the firm and sale to plaintiffs were practically simultaneous. (See Appendix, p. 10, q. 57, and p. 12, q. 397.) That is, they bought the property one day for $40,000 and sold it the next for $65,000, an advance of 62½ per cent. There was nothing occurred in the meantime to enhance the real or the market value of the premises. The defendants do not pretend to have known any fact affecting its value which was not equally well known to every real estate dealer in Washington. The corporation had for years held this property for sale. Its trustees, appointed by act of Congress, were presumably men of intelligence and integrity. Mr. Baker and Mr. Bowen, who were examined as witnesses, are well known to be such. It was their duty, and no one doubts that it was their desire, to sell this property to the best advantage. For two years, at least, they had been considering its sale. Up to the 15th day of May they were under no more obligation to sell to or through Kilbourn & Latta than to or through any one else. Why should they then agree to take $40,000 if they had known or had reason to suppose that any one else would have paid more for it? And yet, as the defendants testify, if these trustees had happened to encounter Sunderland and Hillyer they would have found an eager purchaser at $65,000, or if they had chanced to meet Mr. E. C. Ingersoll (now dead and unable to corroborate or contradict the statement), he would have esteemed it a favor to buy at $70,000. (See Appendix, p. 10, q. 64, and p. 11, q. 86.) If the plaintiffs were, as defendants say, anxious to purchase this square, why did they not themselves make some attempt to ascertain by whom it was owned and for what price it could be had? If they had agents to do this for them, their non-interference was natural. But if, as defendants say, they had no agents, but investigated for themselves,

made their own bargains, and relied on their own judgment, then their conduct can only be explained by supposing them to be destitute of ordinary business sense. Plaintiffs did not communicate, and made no attempt to communicate, with any of these trustees, either directly or, except through the firm of Kilbourn & Latta, indirectly. It is difficult to believe that the defendants honestly made in one day, or two weeks, without investing a cent, a profit of $25,000, or 62½ per cent. upon the purchase and sale of a piece of unimproved land, which had been upon the market for sale for more than two years. It is difficult to believe that the plaintiffs, without any investigation or negotiation, paid $65,000 for property of this character, which a few days before they might have had for $40,000, and which was then actually sold for $39,000, unless they were in some manner deceived. The whole transaction only ceases to be improbable upon the hypothesis that the plaintiffs trusted the defendants and the defendants betrayed their confidence.

2d. The efforts made by defendants to conceal their interest in the transaction are not easily reconcilable with an honest purpose. If they were acting fairly there was no need of any concealment. They say it was part of the business of the firm to buy and sell real estate. No one ever questioned their right to do it. They, therefore, might well have done it openly. Yet, in this transaction they were not merely silent, but took great pains, by positive statements and acts, to hide its real character and their relation to it. First, they told the trustees of the corporation that they were purchasing for others, and not for themselves. Bowen and Baker both testify to this. (Plaintiffs' testimony, fols. 542, 556.) If they had represented to these trustees that they were themselves the purchasers, it is very improbable that a commission should have been charged to the vendor. Instead of that, the purchase price would have been nominally, as well as really, $39,000. Again, for the same purpose, they made fictitious entries of the transaction in their books. From these it would appear that George Taylor bought the property from the institution and sold it to the plaintiffs, and that defendants had no other interest in it than their commission on the first sale. Yet, as they now admit, Taylor had no interest whatever. He for some unexplained reason allowed his name to be used to cover up the interest of defendants. Whether Taylor knew the ultimate purpose of this concealment does not appear. It is quite possible that he himself was in this respect deceived by defendants. But as to their (defendants') motive there can be no question. They concealed their interest because they knew they had, by reason of their relation to plaintiffs, no right to have an interest.

Again, plaintiffs first came to a knowledge of the Altoona letter of May 26 (ante, p. 33) by seeing an extract from it in the testimony in case of Kilbourn and Olmstead *v.* Latta. On the examination of Mr. Olmstead in the present case he was shown this extract and asked to produce the original. He admitted to having it in his pos-

session, but refused to produce it, because, as he said, the *extract contained everything which in any way related to this case.* He reiterated this statement several times in a subsequent examination, while refusing to produce the letter. (Plaintiffs' examination, fol. 618, 619, 645.) An order of court was then procured directing him to produce the original. In obedience to this order, the original was produced, and it there appeared that immediately after the part contained in the extract occurred the following interesting passage:

> Of course no deeds go on record until we get ready. *Hand Taylor a copy of his letter of instructions to us about sale of* 115, *that he may have it fresh in his memory if questioned.*

With all deference to the opinion of Mr. Olmstead as to its irrelevancy, I consider that this one short sentence written by Latta to his partners throws more light upon the real character of this transaction than would a volume of Mr. Latta's present statements under oath. It shows the importance attached by defendants to having Taylor appear to others as the real purchaser of this square instead of themselves, that they had prepared and procured to be given or sent to them by Taylor a letter purporting to be a letter of *instruction* as to its sale; that the purpose of this letter was to deceive some one into believing in the truth of the fictitious entry proposed to be made in their books; that defendants feared some inquiry might be made, and deemed it necessary in that event that Taylor should support his character of purchaser in oral conversation as well as in writing, and that Taylor knew so little of his own letter of instruction as to make it prudent to furnish him with a copy to refresh his memory as to what he was supposed to have written and was expected to say. Here, then, is a carefully devised plan, to be carried out by a series of falsehoods, for the purpose of deceiving some one, and the question is whom? There is but one answer to this question, for, except the plaintiffs, it is impossible to suggest any one whom they had any motive for deceiving, or in whose deception they could have had any interest.

3d. In a letter written by Latta to Sunderland, July 18, 1872, this is said (exhibit T. S., No. 24):

> The two notes given to George Taylor on square 115, and due in one and two years from May 30th, 1872, *he wants to sell*, and will take 2 per cent. off; they draw 6 per cent. interest, which will make it a little over 8 per cent. Don't you want them?

The notes here spoken of are the two above mentioned given for deferred payment on this square, made payable to Taylor, but immediately indorsed by him to the firm. These notes belonged to and were held by the firm at the time the letter was written. The extract quoted shows two things: 1st. That up to that time plaintiffs were ignorant of the fact that these notes were made for the benefit of defendants, and consequently of the fact that defendants were the vendors or were interested in this sale to them; and, 2d. That it was the intention of defendants to keep plaintiffs in ignorance of this fact.

And by showing these facts this letter shows another thing, viz: the value to be attached to Latta's statements under oath. In his deposition (taken *ex parte* and without any fear of cross-examination before him) he says (fol. 259, 260, 261) that Sunderland & Hillyer knew all about this transaction; knew that the firm (Kilbourn & Latta) were the purchasers from the corporation; that they (Sunderland and Hillyer) were purchasing from the firm at an advance and the amount of the advance; says that he himself told Sunderland and Hillyer all about it. Now it hardly need be pointed out how clearly the passage from his letter above quoted demonstrates the falsity of his statements in his deposition. If what he has testified to had been the truth it is simply impossible that he could have written the letter. He represents George Taylor as being the owner of these notes —the real and sole party in interest, and willing to discount them two per cent. for cash, and asks advice what shall be done. I am not now dealing with the falsity of this representation. I am only pointing out how impossible it is that he should have so written unless he knew or believed that Sunderland and Hillyer were entirely ignorant of the interest of the firm of Kilbourn & Latta in these notes, and therefore in the transaction of purchase.

Observe how carefully by this series of false statements, false entries and false writings the defendants guarded against the chance that the plaintiffs, either by accident or even, if suspicion should be aroused, by inquiry, might discover the interest of defendants in this transaction. If they talked with the trustees of the corporation they would only learn that the defendants represented that they were purchasing for others and not for themselves. If they should see the book entries they would disclose no other connection of the defendants with the purchase than that of brokers. Their bookkeeper, if disposed, could give them no information. The only man who could have informed them was Taylor, and he carried written instructions to enable him to answer discreetly any question that might be asked.

4th. I wish now to call attention to certain extracts from the testimony of Olmstead and Kilbourn respecting this purchase, which will be found in the Appendix (pp. 10, 11 and 12). There are some curious differences in these statements. According to Olmstead, Sunderland and Hillyer knew nothing about this square or any of the negotiations concerning it, until the day on which they bought it. On the contrary, everything concerning it was studiously concealed from them until that time. (Appendix, p. 10, q. 39 and 67; p. 11, q. 107, 108, and q. 205, and p. 12, q. 400 and 401.) When first mentioned to them, they took it in five minutes. (Appendix, p. 10, a. to q. 51). According to Kilbourn, not only had Latta and Hillyer been for a long while talking about this square, but they knew of the negotiations for its purchase by the firm while they were in progress, and were awaiting the result, because there "could not be anything definite" until those negotiations were concluded. (Appendix, p. 12, q. 100, 101 and 108, and from q. 117 to 120.) I scarcely

know which of these two statements is inherently most improbable. That complainants should, as Olmstead says, without any previous knowledge, without any investigation, inquiry or negotiation, and relying upon no one but themselves, accept the first offer made to them, and conclude with this reckless haste a transaction of this magnitude, is sufficiently incredible. But to suppose, as Kilbourn states it, that complainants being desirous of purchasing this property, should be told by a firm of brokers that they, the brokers, were themselves trying to purchase it, and were negotiating for that purpose, and that their motive in purchasing was to resell at once to the complainants, and that thereupon the complainants should politely remain quiescent until the firm had made its bargain, and as soon as informed that this had been done, agree to take it off their hands at a price fixed by the firm without inquiring what they had paid for it, is still more difficult to believe. Olmstead says (Appendix, q. 264) that when they bought it they expected to sell it to Sunderland and Hillyer (why, if he had studiously avoided saying anything to them about it, he does not explain) and (Appendix, q. 93) that he did not offer it to anybody else. Kilbourn, although he says that Sunderland and Hillyer knew about the negotiations and who the original owner was with whom they were being conducted, yet (Appendix, q. 112) says that they did not know that the firm of Kilbourn & Latta were the owners at the time of accepting the $65,000 offer. If this be so, can any one guess what Sunderland and Hillyer supposed they understood about these negotiations, whose results they were awaiting in order to purchase themselves? The fact is that, accepting all that defendants say about it as true, the transaction is a riddle upon any theory which supposes the plaintiffs to be sensible and the defendants to be honest. Undoubtedly, as Kilbourn says, the plaintiffs knew of these negotiations, but undoubtedly, as he does not say, they were informed, and believed, that these negotiations were being conducted for them and in their interest. Undoubtedly, as Olmstead says, they took the property without hesitation when told that the negotiations were concluded; but undoubtedly they did so because they supposed they were buying from the original owner, and that the price paid was the result of negotiations conducted in good faith by their agents.

SQUARE 155.

The undisputed facts are these: May 24, 1872, Burgess and Orme purchased the square of the Bancroft estate for $64,550.61, no part of which was paid by them in cash. Two weeks later, June 7th, they deeded it to James M. Latta, trustee, in pursuance of a purchase made by Sunderland, Hillyer and Stewart through Kilbourn & Latta. A copy of the entry made by defendants in their books in relation to this purchase has been already set forth. (Ante, p. 42.) From this entry it would appear that the square was sold by Burgess and Orme

to Sunderland, Hillyer & Co.; that the purchase price was $72,970, of which they paid in cash $18,420 and assumed an incumbrance of $54,550. The real price at which Burgess and Orme sold was $67,650, out of which Kilbourn & Latta retained $433 for expenses, paying to Burgess and Orme $2,697, as appears from this entry. Out of the cash payment made by plaintiffs Burgess and Orme received $2,667, and one of the notes made by them on this purchase and secured by their deed of trust amounting, principal and interest, to $10,026 was paid. After deducting these payments and $82 charged in the entry as expenses, there remained in the hands of defendants $5,645 unaccounted for except by the charge of $5,243.86 as commissions. In the account rendered to plaintiffs (exhibit A, fol. 220) there were only these entries relating to this purchase: 1st. A charge to plaintiffs of the purchase price $72,970, a charge of $25 for examining title, and a credit of $54,556.65 assumed incumbrance.

It thus appears that the plaintiffs are charged with a purchase price greater than the amount actually paid to their vendors and so augmented as to conceal a profit of $5,645 retained by defendants, If they were acting, or professing to act, as agents for plaintiffs, then this is an illegitimate profit which they must restore. If they had in good faith fulfilled their obligations as plaintiffs' brokers, they would have been entitled to charge to them commissions at regular rates for the actual purchase price ($67,650.65), amounting to $1,566, leaving the balance in their hands belonging to plaintiffs $4,079. But if, as the bill charges, they practised a fraud upon their principals, this deprives them of the right to any commission, and they must account to plaintiffs for the whole amount retained by them. The defense here is similar to that in respect to square 115; that is, defendants say that they, in connection with Charles A. Eldredge, purchased from Burgess and Orme and then sold to Sunderland and Hillyer. Burgess testifies that defendants represented to him that they were purchasing for others and not for themselves. (Plaintiffs' testimony, fol. 559.) There is nothing in the books of the defendants showing any connection, either of themselves or of Eldredge, with this purchase or sale, or indicating any interest of either, at any time in this square. On the other hand the book entry recites a sale direct from Burgess and Orme to Sunderland, Hillyer & Co. The $3,100 paid to Burgess and Orme, and the $10,026 to take up their notes, were paid from the moneys of the plaintiffs. The defendants do not pretend that they or any one else than the plaintiffs advanced or used or became liable for any money in connection with this purchase. But one deed was made, and that was a conveyance by Burgess and Orme to J. M. Latta, trustee, made contemporaneously with the payment by plaintiffs of the cash consideration. The deed is dated June 7th, and on the same day plaintiffs are charged with $25 for examining the title to the property. From the book entry it would appear that Burgess and Orme paid to the firm a commission of $5,243; but Burgess and Orme, in fact, paid no commissions. As defendants now say, this

know which of these two statements is inherently most improbable. That complainants should, as Olmstead says, without any previous knowledge, without any investigation, inquiry or negotiation, and relying upon no one but themselves, accept the first offer made to them, and conclude with this reckless haste a transaction of this magnitude, is sufficiently incredible. But to suppose, as Kilbourn states it, that complainants being desirous of purchasing this property, should be told by a firm of brokers that they, the brokers, were themselves trying to purchase it, and were negotiating for that purpose, and that their motive in purchasing was to resell at once to the complainants, and that thereupon the complainants should politely remain quiescent until the firm had made its bargain, and as soon as informed that this had been done, agree to take it off their hands at a price fixed by the firm without inquiring what they had paid for it, is still more difficult to believe. Olmstead says (Appendix, q. 264) that when they bought it they expected to sell it to Sunderland and Hillyer (why, if he had studiously avoided saying anything to them about it, he does not explain) and (Appendix, q. 93) that he did not offer it to anybody else. Kilbourn, although he says that Sunderland and Hillyer knew about the negotiations and who the original owner was with whom they were being conducted, yet (Appendix, q. 112) says that they did not know that the firm of Kilbourn & Latta were the owners at the time of accepting the $65,000 offer. If this be so, can any one guess what Sunderland and Hillyer supposed they understood about these negotiations, whose results they were awaiting in order to purchase themselves? The fact is that, accepting all that defendants say about it as true, the transaction is a riddle upon any theory which supposes the plaintiffs to be sensible and the defendants to be honest. Undoubtedly, as Kilbourn says, the plaintiffs knew of these negotiations, but undoubtedly, as he does not say, they were informed, and believed, that these negotiations were being conducted for them and in their interest. Undoubtedly, as Olmstead says, they took the property without hesitation when told that the negotiations were concluded; but undoubtedly they did so because they supposed they were buying from the original owner, and that the price paid was the result of negotiations conducted in good faith by their agents.

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amount represents a profit to be divided between themselves and Eldredge. Why, then, was it not entered as such? I venture to say that no plausible reason can be suggested consistent with an honest purpose. The manifest intent of these entries, taken as a whole, is that it should appear to any one who might read them that Burgess and Orme sold this property to Sunderland and Hillyer for $72,970, and that defendants had no interest in the transaction otherwise than as brokers.

It is difficult to believe that this substitution of a fiction for a fact was done carelessly or wantonly. It was done to keep from some one a knowledge of the fact. As there was no one other than the plaintiffs from whom the defendants had any interest to conceal this fact, and none to conceal it from them unless the fact was inconsistent with the obligations of defendants, this must be regarded as another circumstance tending to show the existence of the fiduciary relations charged in bill. And right here I wish to point out another illustration of Mr. Latta's characteristic mendacity. In the deed from Burgess and Orme to Latta as trustee for plaintiffs (plaintiffs' exhibit H, fol. 561) there is a mistake of $10,000 in the statement of the consideration. The deed recites that an incumbrance of $64,550 was assumed by the grantee, when in fact $10,000 of the $13,000 cash consideration named was a payment upon this original secured indebtedness, reducing it therefore to $54,550. About this fact there is no doubt. Burgess asserts it, Olmstead and Kilbourn admit it, and the account rendered to plaintiffs (exhibit A) clearly states it. Yet Latta, both in his answer and deposition, attempts to take advantage of this error in the recital to persuade the court that the firm made no profit in this transaction, but actually sustained a loss. In his answer (fol. 179) he takes pains to assert positively that the consideration mentioned in the deed was the true consideration. In his deposition (fol. 262) he reasserts this, and says distinctly that the purchase price paid Burgess and Orme was $77,520, and then adds:

> As in the account furnished by Kilbourn & Latta to Sunderland and Hillyer, they are only charged with $72,970, indicating that we did not charge Sunderland and Hillyer enough by $4,680.35.

His reiterated assertion of the correctness of the recitals in the deed are not only shown by the other evidence to be beyond all question untrue, but it is impossible to suppose that Latta believed it to be true. In the very account to which he refers (and which, with the deed, Mr. Latta must, from the particularity of his statements, have seen very recently), the only credit given to plaintiffs for incumbrances is $54,550. Had the recitals in the deed been correct, they should have been credited for incumbrances with $64,550. The *balance* of the account would not have been in any way affected by accepting as true the statements in the deed. The plaintiffs would have been charged with $10,000 more as the purchase price, and their credit would have been greater by $10,000 for incumbrances. The last part of the sentence quoted illustrates how easily

a false statement leads to an absurd one. If there was any mistake, it was a mistake of $10,000, neither more nor less. Taking the deed as correct, the actual consideration paid to Burgess and Orme would have been $77,650. It is by subtracting from this sum $72,970, with which plaintiffs are charged, that Mr. Latta obtains his $4,680, the amount by which, as he says, the plaintiffs were undercharged. But this can only be upon the assumption that plaintiffs should have been charged with the exact amount which Burgess and Orme received, ignoring entirely the $5,000 and upwards of profits made by the defendants. No profits for the firm can be figured out by taking the recitals of the deed to be true, as Mr. Latta says they are, and adding to the purchase price actually charged to plaintiffs the $4,680 which he says is the amount of the error *against* the firm. To give the firm this profit the addition to the purchase price charged must be $10,000—that is the exact amount of the error in the deed—and this addition cannot be made, as I have shown, without at the same time adding $10,000 to the credit of the plaintiffs, by which change the firm could neither gain nor lose. This matter is of no intrinsic importance. I have dwelt upon it only to further illustrate the value which should be attached to Mr. Latta's sworn statements. A careful examination must convince any one that he deliberately stated what he knew to be untrue in respect to the consideration of this purchase. He did this to screen himself from liability under the shelter of a recital in the deed, which he knew to be a mistake. That he did it in a blundering way only illustrates how easily a witness, however shrewd, may become confused when he relies not upon his memory, but upon his wits, when the process of testifying is not a process of recollection but of calculation.

To return to the transaction itself, it may be summed up as follows: From the accounts rendered to plaintiffs and from the entries in defendants' books, this was a sale from Burgess and Orme direct to the plaintiffs at the price of $72,970. The funds used in making the purchase were the funds of the plaintiffs. The actual price paid Burgess and Orme was $67,650. The difference ($5,320) was taken by defendants, who used every precaution to conceal the fact. If they were plaintiffs' agents this was a fraud, and they must account to them for the whole of this profit. It is immaterial whether they did, as they say, give to Eldredge $2,000 of this amount or not. That they did so we have only their assertion, for there is not in their books a word or figure in any way connecting Mr. Eldredge with this purchase, and they do not pretend that he did anything or paid anything. (Testimony of Olmstead, fol. 1096.) They had no more right to take the money of plaintiffs and give it to Eldredge than to take it and retain it themselves. Their only escape from liability is in successfully denying the relation of agency.

SQUARE 158.

Lot 17.—E. P. Morgan, the owner of this lot, conveyed it by deed dated May 23d and acknowledged May 25, 1872, to John Bull, the bookkeeper of defendants, and May 31st, Bull deeded it to J. M. Latta, trustee for plaintiffs. The consideration paid Morgan was $5,000, of which $1,000 was cash. The purchase price charged to and paid by plaintiffs was $8,316, of which $4,316 was cash. Bull had no interest in the transaction, but at the request of defendants took the deed from Morgan and conveyed to Latta without asking or receiving any explanations of the reasons for passing the title through him. Defendants admit that the $3,316 was a profit made by them. They say that they bought from Morgan and sold to Sunderland, Hillyer & Co. They paid no money of their own, but made the cash payment of $1,000 to Morgan from funds of the plaintiffs in their hands. (See Latta's testimony in former case, ante, p. 31.) For the deferred payment Latta, as trustee and on behalf of plaintiffs, made a note for $4,000 and executed a trust deed, as trustee for plaintiffs, to secure it. The plaintiffs are charged with the expense of examination of the title. These facts show that, notwithstanding the two deeds, the passing of the title from Morgan to plaintiffs was in fact but a single transaction. The deed to Bull was a superfluous formality, he, Bull, having no interest and knowing, in fact, nothing as to the character of the transaction or the purpose of the conveyance to him. (Testimony of Bull, fol. 504.)

As to the relations between the firm and the plaintiffs, Olmstead attempts to make a distinction between these lots in square 158 and the other property purchased. He says (fol. 1011):

> That plaintiffs authorized us to go and buy anything in that square we could get hold of at fifty cents a foot. They simply put a round figure of fifty cents a foot on anything we could buy there, and as we picked up the property we charged it to their account at fifty cents a foot.

And folio 1012:

> They authorized us to buy anything in that square at fifty cents. We bought that for $5,000 and sold it to them for eight thousand and some odd dollars. I don't recollect exactly what the amount was. In that instance they made what is ordinarily known in stock brokerage as an open order. For instance, they say buy this line or that at such a price, and the broker takes care of himself.

It is evident in the first place from these statements that the lots bought by plaintiffs in this square were not in the hands of defendants for sale either as owners or as agents for others. The primary undertaking of defendants was to purchase, not to sell. The inducement to purchase came solely from their relations with plaintiffs. But for the plaintiffs the purchases would not have been made. The initiatory steps taken by defendants in respect to these purchases were subsequent to and in pursuance of an arrangement of some character with the plaintiffs. The only question is as to the character of this arrangement.

It was undoubtedly possible for plaintiffs to have made the arrangement testified to by Olmstead; that is, to have agreed to pay defendants fifty cents per foot for any lots which they might buy for them in this square, regardless of the price at which they should be obtained from the owners. This, I say, is possible, but it is inherently very improbable. The square was entirely unimproved and was, therefore, all for sale. The value of different lots in this, as in every large square, varied greatly. Olmstead admits (fol. 1093) that in this square there was 30 per cent. difference in the value of different lots. The plaintiffs were purchasing solely for speculation. If they had common sense they proposed to buy as cheaply as possible, and unless they were destitute of business capacity they proposed to employ the ordinary means for ascertaining the lowest price for which its owners were willing to sell. The plaintiffs did not in fact communicate or attempt to communicate with any of the owners of property which they purchased. They made no attempt to inform themselves directly or indirectly except through the firm of Kilbourn & Latta as to the price asked for any particular piece of property by its owner. We cannot suppose that the plaintiffs did not understand the necessity of inquiry and the value of negotiation. Nothing could be more stupid in a business point of view than to bind themselves beforehand to pay a fixed uniform price for whatever these brokers might be able to purchase on this or any other square. In such an agreement the advantages were all on one side. They could by no possibility gain anything by it, and they might, and in fact were almost sure, to lose. How much they might lose is shown in the case under consideration.

Had plaintiffs gone themselves to Morgan, or employed a broker to negotiate with him, they would have bought this lot for $5,000, instead of $8,316—that is, they would have saved $3,316, or 66 per cent. on the amount. The difference between the price asked by Morgan and that paid by the plaintiffs is too great to be accounted for by the supposed ignorance of either. The only rational explanation is that plaintiffs were imposed upon, and without inquiry accepted the statements and acted upon the advice of those whom they supposed were, as their agents, negotiating and advising in their interest.

As to the other lots in square 158, mentioned in plaintiffs' bill, the answers (par. 7) do not deny that defendants made the profit thereon, as charged by plaintiffs, aggregating $2,663. The only issue is upon the agency of defendants, and if that has been established, then the liability of defendants for the amount above stated follows as a necessary deduction. What has been said with regard to lot 17 applies equally to them.

SQUARE 156.

The circumstances in regard to the purchase of this square are peculiar. In 1871 an association was formed for the purchase of real estate, called the Real Estate Association, composed of Jay Cooke & Co., having a half interest, and Chas. A. Eldredge, P. M. B. Young, Judge MacArthur, Eli Parker, and General Belknap, each having a tenth interest. They paid in as capital $50,000, in the proportions above stated, and placed this sum in the hands of Kilbourn & Latta, as brokers, to make the purchases. In October, 1871, these brokers purchased from Thomas Young, on account of the association, square 156, for the sum of $65,748, Young paying the firm out of this a double commission of $4,673. The title was taken in the name of Hallett Kilbourn, trustee. In May, 1872, Sunderland, Hillyer & Co. purchased, through Kilbourn & Latta, this square for $90,429, and Kilbourn deeded it to James M. Latta, trustee. None of the members of the Real Estate Association were consulted before the making of this sale, nor, either at the time nor subsequently, were they informed that it had been made. (Testimony of Kilbourn, fol. 893; testimony of Olmstead, fol. 1256; testimony of Eldredge, fol. 1634, and of MacArthur, fol. 1669.) The defendants testify that they had a general authority to sell, as well as buy, without consulting any member of the association. (Testimony of Kilbourn, fol. 893.) The defendants further testify that, by the terms of their employment by the Real Estate Association, they were, besides their commissions, to share equally with the association all profits which might be realized upon sale of property purchased. (Testimony of Olmstead, fol. 1120; testimony of Kilbourn, fol. 911.) The difference between the price for which the property was purchased from Young and that paid by Sunderland, Hillyer & Co. was $24,681. Out of this defendants took a commission of $4,521. Of the balance ($20,160) the defendants say that they took one-half, or $10,080, as their share of the profits. (Testimony of Olmstead, fol. 1120.) What became of the other half Olmstead declines to state, but none of it was ever paid to any member of the association. It was put into the bank account of defendants as a credit to them, and there remained. In December, 1873, defendants purchased the interest of Judge MacArthur in the association. (Exhibit J. F. O., No. 6, fol. 1493.) The price paid was $5,000, being the amount originally paid in by him, without interest. They represented to him that, owing to the financial panic, it would be necessary to levy an additional assessment on the members of the association. They gave him no account or statement, and did not inform him that any profits had been made by the resale of any property purchased. (Testimony of MacArthur, fol. 1668.) In the same way, from time to time, between the last-named date and November, 1875, they purchased the interest of all the other owners in the association except that of Eldredge. The interest of Eldredge was bought by Olmstead in ——, 1880, the consideration being the

transfer of a lot worth less than the amount which he had paid in in cash. (Testimony of Eldredge, fol. 1632.)

As to the alleged agreement by which these defendants were to have, in addition to their commissions, one-half the profits of the association, they are directly contradicted by Mr. Eldredge (fol. 1630) and by Judge MacArthur (fol. 1667). They both say that they never heard of any such agreement and, which is sufficiently apparent, that none such could have existed without their knowledge. Without any contradictory evidence, it would be difficult to believe that any man or set of men consented to so one-sided an arrangement. On this single transaction the defendants made, as their books show, commissions amounting to ($4,673, paid by Young, and $4,521 charged on sale to plaintiffs) $9,194. The association put up all the money and took all the risks. To agree in addition to give one-half the profits was not business but incredible folly. Whether the fact is one way or the other is not directly material to plaintiffs; but under the pleadings the veracity of the defendants is in issue. The fact here sworn to by them is from its nature and importance, one about which they could not have been originally mistaken and which they could now fail to remember. Accepting, as I have no doubt the court will, the statements of Mr. Eldredge and Judge MacArthur as correct, there is no escape from the conclusion that the defendants have deliberately testified to that which they knew to be untrue.

Upon the facts above stated, the material question here, as in the cases previously considered, is as to the relation between the defendants and the plaintiffs. It is true that this transaction is complicated by one element which did not exist in the others. Instead of a single, the defendants here practised a double, fraud. They were undoubtedly under obligation to act in this transaction as the agents of the Real Estate Association as much so as, assuming as true the allegations of the bill, they were under obligations to act in the same transaction as the agents of the plaintiffs. Having assumed a position where they owed inconsistent duties to two principals, they solved the difficulty by performing neither. They did not prefer one client to the other, but simply preferred themselves to both. No one can read the testimony and doubt that, by concealment and misrepresentation, they deceived and misled to their injury the members of the Real Estate Association, and thereby incurred toward them a liability which could have been, and, perhaps, can now be enforced. Had they in good faith, acting as brokers for the Real Estate Association, sold this property to plaintiffs for $90,429, they would have been entitled to commissions at regular rates amounting to $2,325.60, and the balance of the difference between the purchase and sale price should have been paid over to the association. Instead of this they first took out $4,521, calling it a commission; then took for themselves half of the remaining $20,160 as their share of profits; and then, by concealing the fact that any profits had been made until they had purchased the several interests in the association, they

secured for themselves that which remained. That this conduct constituted an actionable injury against the members of the association is unquestionable. But it does not follow that they did not by this same conduct incur a liability to the plaintiffs. The plaintiffs aver that defendants agreed to negotiate for the purchase of this property, as their agents and in their interest; that they professed so to have negotiated, and represented that a certain price was the lowest for which the property could be obtained from its owners, and that upon this representation, and being advised thereto by the defendants, the plaintiffs were induced to sanction a purchase at this price; that they did not know or suspect that defendants had any interest or were under any obligation to any one else in the transaction. That they did not disclose their interest is admitted by Olmstead. If these are the facts then the defendants were not at liberty to realize any profit for themselves in the transaction, and if they did so, it was a breach of trust rendering them liable to the plaintiffs for the full amount so realized. This liabilily is in no way affected by their actual undisclosed relations or agreements with the Real Estate Association. In a suit by the association against defendants to compel an accounting for the profits made on this sale the latter would not be permitted to show as a defense that these profits were in fact obtained by practising a fraud upon the plaintiffs, and that for this reason defendants might be held liable therefor in a suit against them by the plaintiffs. No more in a suit against them by the plaintiffs, based upon the fraud practised upon them, will it constitute a defense to show that these profits were received and retained by them under such circumstances that they might have been or may be compelled to account therefor in an action against them by the association. They cannot escape liability for a fraud practised upon one by showing that their conduct in the same transaction was also a fraud upon another, although the consequence may be to subject them to a double liability.

Assuming, then, that a general agency for plaintiffs has been established, it only remains to consider the amount which, under the proofs, plaintiffs are entitled to recover. The legal principle to be applied is the same as that heretofore stated, viz: that if defendants were the agents of plaintiffs to purchase, it was a breach of their trust for them to attempt to make a profit for themselves in the transaction, and for whatever profit so made they were to account to plaintiffs. See this rule stated and applied in the following recent English cases: Bently *v.* Craven, 18 Beavan, p. 75; Parker *v.* McKenna, 44 L. J. Chanc., 425 (10 L. R. Chanc., 96), and Morrison *v.* Thompson, L. R. Q. B., 480 (22 W. R., 859). The amount which they admit to have realized directly upon the sale is $14,601. With this amount, as they testify, and, as against themselves, we must take their word, the Real Estate Association had nothing to do. Had they acted honestly, they would have been entitled to a commission of $2,325; but if they acted dishonestly, and to charge them at all

the court must so find, they are entitled to no allowance for commissions. There would, therefore, seem to be no question as to the right of plaintiffs to recover this $14,601, which they admit that they actually received.

As to the balance the question is somewhat different. The defendants do not admit that this was a profit made by them, but assert that it belonged to the association and was held by them for its benefit. But it is certain that if so held the members of the association were ignorant of the fact, and no one of them ever derived any benefit from it. The firm never paid to any member any portion of it at any rate. In fact, if Mr. Olmstead is correct when he says (fol. 1110), "We were a part and parcel of the Real Estate Association," and when he says, "The Real Estate Association was in fact Kilbourn & Latta," there would seem to be no particular reason why they should not take all the profits and let the men who put up the money be satisfied with that as their part of the operation. Immediately upon the sale they put the profit with their own funds, and there it remained. There is no entry in their books crediting this amount to the association, or in any way distinguishing it from the half of the profits which they admit that they appropriated to themselves. Whatever may have been their secret intentions, they did in fact take it and use it as their own, and up to the present time their right to it appears not to have been legally questioned. I think, therefore, that, for the purpose of this action, this may be treated as a profit realized by the defendants; that, whatever may have been the fact, it should, as between the plaintiffs and the defendants, be presumed that the association, the real owner, willingly parted with this property for what it had cost, and that the difference of price was an unauthorized overcharge, dishonestly imposed upon the plaintiffs in the purchase. Accordingly, as the court shall or shall not agree to this view, the defendants will be chargeable with $24,681 or only with $14,601.

VALUE OF PROPERTY PURCHASED.

The court will observe that in the treatment of the several transactions complained of in this bill no consideration has been given to the actual value of the property purchased as compared with the price paid by plaintiffs. Nor was any evidence specially directed to the question of positive or relative value introduced by complainants. For the application of the legal principle upon which complainants rest their right to recover, such evidence is unnecessary, and in fact irrelevant. That principle is, that an agent will not be permitted to make a profit for himself out of the conduct of his principal's business, and that for all gains so realized he will be held accountable in equity as a trustee for his principal. The reasoning upon which the rule is based I suppose to be that an agent, being bound to do

the best he can for his principal in the conduct of all business within the scope of his agency, any profit gained by him therein is one which might have been, and therefore should have been, and by a court of equity will be, considered as having been made for his principal.

If it were admitted or proven that plaintiffs paid no more for this property than it was worth, it would be none the less true that they paid more for it by the amount of profits taken by defendants than they would have paid had defendants faithfully discharged their duty as agents. The only pertinence which evidence as to value could have to any issue in the case is in its possible bearing upon the main propositions of the existence and breach of a trust relation between the parties. Even in this view, only evidence of market value as distinguished from intrinsic value could be considered. As regards its bearing upon this question, there is enough in the record to make it extremely probable that the prices paid by plaintiffs were exorbitant. Excepting square 156, the defense as to each transaction is an alleged sale by third persons to defendants and a resale by them to plaintiffs, and in each instance the sale and resale were practically contemporaneous. Nothing in the evidence justifies the supposition that there was any intervening change of market value. Yet the prices paid by plaintiffs were on the average one-third greater than those paid by defendants. Either, therefore, the defendants purchased far below the market value or the plaintiffs paid far above it. Take, for example, square 115, where the alleged purchase by defendants and resale to plaintiffs were so thoroughly identical in time that the plaintiffs received their title from the original vendor and made the cash payment thereon to him, and where the amount received by this vendor was $40,000 and the price paid by plaintiffs $65,000. Nothing in the evidence suggests any reason why the trustees of the corporation owning this property should not have known what it was worth, or why they should have consented to sell it for less. On the other hand, the facts stated in the bill sufficiently explain how the plaintiffs might have been misled to pay much more than it was worth. I think in this, as in other cases, the price at which the defendants were able, by the employment of the ordinary methods of negotiation, to obtain the property from its owners is the best obtainable criterion of its market value. As said before, the intrinsic value is of no importance, but if it were I should call attention to the assertion made by defendants in their answers, and reiterated in their testimony, that five years afterwards, and when plaintiffs, from outside means, had paid in cash two-thirds of the original purchase price, the entire property was not considered sufficiently valuable to safely secure the one-third of the purchase price remaining unpaid. (Fols. 58, 193.)

ADMITTED BALANCE DUE FROM LATTA.

Latta's accounts rendered to close business with plaintiffs in 1878 (exhibit E and exhibit L) show a credit balance in favor of Sunderland and Hillyer of $5,480.92, and a debit balance against Thomas Sunderland of $4,245.16. From the manner in which the accounts were kept, it is proper that the amount due from Sunderland should be credited upon the amount due to Sunderland and Hillyer, leaving, therefore, the balance due from Latta to Sunderland and Hillyer, $1,235.79. It is not claimed that any part of this has been paid. Sunderland testifies that it has not been paid and is still due.

COMMISSIONS ON SALE OF STEWART'S HOUSE.

In 1873 R. I. Fleming took in part payment of a building contract with W. M. Stewart, a house owned by the latter on Massachusetts avenue. (Testimony of Fleming, fol. 1597.) In December, 1873, Kilbourn & Latta entered in their books a charge against Stewart of $1,000 commission on this transfer. Stewart did not pay it, and two years afterwards, in November, 1875, Kilbourn & Latta made an entry charging this $1,000 to Thomas Sunderland, and, from funds of his in their hands, paid themselves the amount. (Page 236) Sunderland was not informed of this until his account (exhibit C) was rendered to him in July, 1878. He (Sunderland) testifies that he had nothing to do with the transaction, that he was in no way responsible for any commissions, and that he never authorized the charge or said or heard anything about it prior to 1878, when he promptly and somewhat indignantly repudiated it. (Fol. 1653.)

No evidence in support of the charge has been given or attempted. Olmstead says that he cannot state any reason for making this charge. (Fol. 1443.) He admits that he presented the bills to Stewart, and that Stewart did not suggest that it was for Sunderland to pay. (Fol. 1444.) The fact is that the firm were not entitled to commissions from anybody, that Stewart refused to pay them, and they then charged and collected them from Sunderland in his absence and without his knowledge.

SPECIAL DEFENSES.

1st. *Statute of Limitations and Laches.* The alleged frauds in purchase of property, the plaintiffs say, were not discovered by them until 1881, a month or two before the bill was filed. It is not claimed by defendants that subsequent to the purchases and prior to 1881 any knowledge came to the plaintiffs respecting them, nor that any circumstance occured which should have put them upon inquiry. Whatever plaintiffs are alleged by defendants to have known prior to 1881 about their (defendants') interest in the purchases or the taking of

profits by them beyond commissions, they learned at the time of or anterior to the purchase. But if, as defendants say in regard to some of the transactions, the plaintiffs at the time of the purchase had knowledge of the facts, then there was no fraud, and consequently no cause of action to be barred or affected by lapse of time.

As to the charge for care and management, the plaintiffs say that they knew nothing about it until after they arrived here in 1878. The date of their arrival was June 17th, Mr. Sunderland being able to fix this accurately by the hotel register. (Fol. 1564.) They say that after their arrival several days elapsed before they received the accounts from which they first discovered this charge. In this they are corroborated by Mr. Bull (fols. 517, 518), who himself, at the request of Olmstead, made out one of the accounts. (Exhibit D, fol. 238.) The present action was commenced June 9, 1881, and the original equity suit against Latta, June 20, 1881. No question is made as to the date when plaintiffs arrived in Washington, nor as to the fact that subsequent to their arrival accounts containing these charges were made out and delivered to them. Nor until nearly a year after the commencement of taking testimony in this case was it questioned that from these accounts plaintiffs obtained their first knowledge of this charge. It is so stated in the bill and is not denied in the answer. (See answer of Kilbourn and Olmstead, paragraph 10.) Olmstead, after having several times in his testimony admitted such to be the fact (see Appendix, p. 9, q. 927 to 929, and also testimony, fol. 1348, q. 1133 and 1134), being re-examined (October 10th, 1882, eight months after his first examination), says that he *thinks* he sent an account containing this charge to one of plaintiffs in November, 1877 (fol. 1392), and a few days afterwards (fol. 1420) is able to state *positively* that he did so, claiming that his memory had been refreshed. The refreshment consisted in finding a paper which he says that he, several months before, took from a package of papers accidently left in his office (when his examination took place) by plaintiff Sunderland. The paper is in evidence. (Fol. 1526, ex. J. F. O., No. 25.) It is an account of Kilbourn and Olmstead, containing no charge for care and management, and no reference to the subject. Its force as a refresher was, as he says, that it caused him to remember that at the same time that he had sent this account, he had also sent some other accounts of the firm of Kilbourn & Latta, which latter must have contained the charges for care and management. I shall assume that as in this sudden burst of recollection, Mr. Olmstead is not corroborated by any person, paper or circumstance, the court will prefer to accept his previous statements, made before he had become so thoroughly impressed with the necessity of taking shelter behind the statute of limitations. The dates above given dispose of the technical bar of the statute. As to laches, the reason why plaintiffs delayed so long in bringing this suit are fully explained by themselves. (Fols. 399, 400, and 496, 659. The fact that within a month after making the discovery plaintiffs employed W. S. Cox, of this city, and placed

in his hands the necessary papers to commence suit to recover these amounts, and that in June, 1880, two suits at law for its recovery were actually commenced in the circuit court of Indiana against all the defendants, are sufficient to disprove any of that sort of negligence which disposes a court of equity to regard unfavorably a stale demand. That the defendants were in no way misled as to the intentions of plaintiffs sufficiently appears by the statement of Olmstead that in July, 1878, plaintiffs stated their determination to sue Latta to recover this amount; that in September, 1878, plaintiffs stated to Jeffries, the attorney for Kilbourn and Olmstead, their intention to hold all the defendants for the amount taken (testimony of Jeffries, fol. 1587), and that in the early part of 1880 Olmstead was informed by Hillyer that plaintiffs were commencing suit in Indiana, and that they intended to commence suit here against all the defendants to recover the whole amount charged for care and management. (Testimony of Olmstead, fols. 1166, 1167.) During the period from July, 1878, to the time of filing the bill both the plaintiffs resided and were engaged in business on the Pacific Coast. Mr. Sunderland remained there all the time until February, 1881, and Mr. Hillyer made only two short visits to Washington, one in the summer of 1879 and the other in the spring of 1880, when he caused the institution of the suits in the circuit court of Indiana.

2d. *Receipt to Kilbourn and Olmstead.* Of the $18,000 of plaintiffs, funds retained by Kilbourn and Olmstead after the dissolution of the firm of Kilbourn & Latta, January 1st, 1877, $2,715 remained in their hands unexpended at the time of the discovery by plaintiffs, in 1878, of the charge for care and management and consequent withdrawal of their business from defendants. Kilbourn and Olmstead admitted this balance to be due, but were not able to pay it immediately. (Testimony of Kilbourn, fol. 865.) Thereupon plaintiffs employed Olmstead under a special agreement to obtain a revision of special improvement taxes, he to receive as compensation ten per cent. upon the amount of reduction (fol. 1507, ex. J. F. O., No. 13), and in this way work out the amount due from Kilbourn and Olmstead to the plaintiffs. At this time a suit, commenced in November, 1877, by Latta against Kilbourn and Olmstead, was pending in this court, in which Latta, among other things, claimed that Kilbourn and Olmstead had at the time of the dissolution of the firm of Kilbourn & Latta assumed the payment of the amount due to plaintiffs by the old firm; that the balance of $2,715 was still unpaid; that Kilbourn and Olmstead were in failing circumstances and were about to dispose of their property, &c., and prayed for an injunction and other relief. In this suit, as between Latta on one side and Kilbourn and Olmstead on the other, the sympathies of the plaintiffs for the reasons stated by them (fols. 1568, 1569, 1649) were with the latter. Kilbourn and Olmstead, through their attorney, Gen. N. L. Jeffries, asked plaintiff Sunder-

land (Hillyer having returned to the Pacific Coast) to accept their note for this balance and give them a receipt showing its payment, which might be filed in Latta's suit as a defense to this part of his complaint. Sunderland agreed to this, and the note was executed and receipt given. The receipt was filed in the suit as proposed, and served the purpose for which it was obtained. It is this receipt, given under these circumstances, which both Kilbourn (fols. 96, 830, and 836) and Olmstead (fol. 1350) now testify was, and was intended to be, as to them a final settlement and full discharge of all liability to plaintiffs, including that in respect to care and management. Considering the circumstances under which it was obtained, the attempt to use it in this way is not very creditable to the disposition of these two defendants. An honorable man, it seems to me, would hesitate to turn an act of kindness done at his request to the doer's injury. In this case the attempt is as impotent as it is indelicate. The receipt is in evidence (ex. S. and H., No. 1, fol. 1506), and its form is of itself a sufficient refutation of of the statements of these defendants. It is simply a carefully worded receipt for so much money on account. It not only does not purport to be a settlement of anything, but itslanguage industriously excludes the idea that it was intended to have any such effect. Kilbourn and Olmstead admit that it was not intended to affect the claim of plaintiffs as against Latta, but only as against themselves. But if the plaintiffs had any claim on account of this charge for care and management it was a claim against all three of the defendants jointly, and one could not be released without releasing the others. Saying nothing of the testimony of Sunderland, who says it was distinctly understood, and the receipt given only upon the express condition that it should not operate as a release of anybody, the testimony of General Jeffries, the attorney for Kilbourn and Olmstead, who conducted the business, and through whose influence mainly Sunderland was induced to do this favor to his clients, removes all doubt either as to what was done or what was intended. (Testimony of Jeffries, fol. 1587, *et seq.*) After reading his testimony, the interesting question with the court will be not as to the legal effect of this paper upon the rights of the plaintiffs, but as to the effect of the baseless assertions of the defendants upon their credibilty as witnesses.

DECREE.

By the terms of the stipulation of March 22, 1882, on file, the court is to render such decree for or against any or either of the parties as the evidence warrants. Accepting the conclusions of the preceding argument there should be a decree:

1. In favor of plaintiffs and against all the defendants:

Amount taken for care and management	$16,526.67
Interest from December 12, 1876.	
Profits on square 115	25,000.00
Interest from May 30, 1872.	
Profits on square 115	5,319.55
Interest from June —, 1872.	
Profits on lot 17, square 158	3,316.00
Interest from June 8, 1872.	
Profits on other lots in square 158	2,663.70
Interest from July 1, 1872.	
Profits on square 156	14,601.00
Interest from May 27, 1872.	

2. In favor of plaintiffs against defendant J. M. Latta:

Amount taken for care and management	$5,677.85
Interest from July 1, 1878.	
Amount due on accounts rendered	1,235.79
Interest from July 1, 1878.	

3. In favor of Thomas Sunderland and against all the defendants:

Amount taken for care and management	$5,973.33
Interest from December 12, 1876.	
Amount taken as commission on sale of Stewart's house	1,000.00
Interest from October 10, 1875.	

4. In favor of Thomas Sunderland and against defendant J. M. Latta:

Amount taken for care and management	$1,672.85
Interest from July 1, 1878.	

J. H. RALSTON,
For Complainants.

APPENDIX.

Testimony of OLMSTEAD. Care and Management.

Direct examination:

Q. 62. I desire to know whether there was an agreement, after the property had been purchased, that the firm of Kilbourn & Latta should keep the accounts of this firm, and look after the payment of interest, deferred principal and taxes, &c., in consideration of the probable commissions that might be received from a resale of the property. Was there any agreement of that kind?

A. There was not.

Q. 63. Was there any agreement between the firm and these complainants and Stewart, or the firm and these complainants on that subject?

A. There was not, at that time.

Q. 64. I am speaking of after the purchase was made?

A. There never was any real agreement in regard to it, so far as I understood. The first time anything was ever said about any compensation to the firm was by Colonel Hillyer, when he came back from Europe in 1873, after the panic. They went away to Europe after making their purchases, and left the property with us for sale, and put their price upon it. There was no agreement at that time and no understanding than this: That, as payments were due, we were to draw in regard to Sunderland's portion on the Bank of California, at sight, by telegraph, for amounts to be paid. For Hillyer's portion, he was to remit. There was no agreement in regard to sale or commissions, and, so far as I know, there was no conversation relative to compensation or to our controlling the property. They could not confer any advantage upon us by giving us control of it. We had that.

Q. 65. If, at any time, there was anything said about what compensation the firm should have, so far as you know, for taking care of this property and looking after these payments, &c., &c., state what it was, and between whom?

A. In 1873, when Mr. Hillyer came back from Europe, and after the panic, we discussed the probability of selling this property, and it seemed to be pretty generally conceded that it was very remote—that we would have to hold it for some time. Then the question came up as to what we were going to charge them for taking care of their property, looking after taxes, assessments, and watching their interest generally in reference to the property; and I heard part of a conversation between Mr. Hillyer and Mr. Latta, in which Latta stated that he thought we ought to have at least one per cent. on the entire purchase value of the property, which amounted to something over $6,000 per annum. Mr. Hillyer said that he thought it was too high; that three-fourths of one per cent. would be a very round charge, and the matter was not settled. Latta held out for his one per cent., and Hillyer did not offer anything, and we finally agreed, between ourselves, that we would charge them at the rate of $5,000 per annum from the time of their purchase, as long as we had control of the property.

* * * * *

Cross-examination by Mr. Hillyer:

* * * * *

X-Q. 478. When did you assume the care and management of the property of Sunderland, Hillyer and Stewart?

A. Well, we had it pretty much from the time they bought it. They seemed right glad that we should take that sort of position.

X-Q. 479. What I ask you is, when did you assume the care and management of the property, or any portion of it, for Sunderland, Hillyer and Stewart?

A. Well, from the very start

X-Q. 480. Was it before Mr. Sunderland went to Europe?

A. You went to Europe, he went to Europe, and then you both went at different times. I do not know now.

X-Q. 481. Do you know of any care and management of that property prior

to the time when Mr. Sunderland went to Europe?

A. When did he go to Europe?

X-Q. 482. Well, you have stated in your deposition, if I understand you, that that was the time when the property was placed in your hands.

A. Well, from that time we had the care and management of it.

X-Q. 483. How came you to have the care and management of it from that time?

A. I think at the request of Sunderland & Hillyer.

X-Q. 484. Who made the request?

A. I think both of them.

X-Q. 485. What was said about it?

A. I do not remember. There was not anything very definite. Mainly, that we were to look after this property, and to do whatever was to be done about it.

X-Q. 486. You do not remember, then, of any definite arrangement about it?

A. No definite arrangement that I remember.

X-Q. 487. Do you remember of any specific placing of the property in your hands for care and management?

A. I do not think there was.

X-Q. 488. When was the property put in your hands for sale?

A. Well, my recollection is that it was for sale from the time it was purchased. It was bought on speculation, as I understood it, and to be sold whenever a profit could be realized.

X-Q. 489. You understood, then, that from that time it was in the hands of Kilbourn & Latta for sale?

A. Yes.

X-Q. 490. When did the firm agree among themselves to charge $5,000 a year for the care and management of this property?

A. Well, I think in 1873. It might have been in 1874, when we talked of it in a general sort of way without coming to any definite conclusion about it. I know we had a consultation with Mr. Mattingly as to what administrators' fees were when they had estates in their hands, and so on.

X-Q. 491. What I asked you, and I wish you would answer it definitely, was, at what time did the firm agree among themselves that they would charge $5,000 a year to Sunderland & Hillyer for the care and management of their property?

A. I have answered that.

X-Q. 492. You do not know, then?

A. I have made all the answer I can.

X-Q. 493. What did you do about the care and management of this property in 1872?

A. We looked after the taxes, which was a very considerable labor. I think it was in 1872 that two rates were charged, one of 2 per cent. and the other at 3 per cent., making 5 per cent. that year. Assessments were being made in a great many cases by people who were not competent to do it, and in regard to one square I remember it was assessed at 40 cents a foot (square 156). I think this was in 1872. I was one of the assessors in the District at that time for this section of the city, about it, and I was pretty familiar with the business.

X-Q. 494. What did you do about the assessments in 1872?

A. Appealed from them and got them reduced.

X-Q. 495. What do you mean by appealed from them?

A. Appealed to the board of equalization and board of assessors.

X-Q. 496. Did you take an appeal in writing?

A. I do not know whether we did or not; I don't suppose we did.

X-Q. 497. How did you take it?

A. Appeared in person before the board.

X-Q. 498. Did you appear in person before the board in 1872?

A. I do not remember whether in 1872 or the spring of 1873.

X-Q. 499. I want to confine this matter to 1872.

A. Then I will make the answer general. I appeared before the board in regard to the property of Sunderland & Hillyer every time it was assessed and the board met.

X-Q. 500. What did you go before the board for?

A. To save them money in having the tax reduced.

X-Q. 501. Did you make a showing for having it reduced?

A. I did.

X-Q. 502. What showing?

A. I told them that the property was assessed too high and gave them instances of other property, perhaps better located, not assessed as high. Used what influence I had with them to get an equalization, and succeeded, too.

X-Q. 503. You used your influence with whom; with the board of equalization, do you mean?

A. Yes, sir.

X-Q. 504. Did you use your influence especially for the property of Sunderland & Hillyer, or for that in connection with other property in the northwestern portion of the city?

A. Both.

X-Q. 505. Did you ever make a separate application for the property of Sunderland & Hillyer in reference to the reduction of the taxes?

A. Yes, sir.

X-Q. 506. When?

A. Every time. I had a separate list made up, which took Brother Bull a week, generally, to get it in shape, and we were paying him $150 per month for that business.

X-Q. 507. Well, now I want to know if you know what you did in 1872 in reference to taxes, and if so, state it.

A. I do not know, except by referring to memoranda, and it will take time to hunt that up.

X-Q. 508. Can you state any one definite act that you did in 1872 in reference to taxes?

A. No.

X-Q. 509. What else besides that did you do in 1872 in reference to this property?

A. I used to go around it every day.

X-Q. 510. What did you go around it for?

A. To keep contractors from stealing the bricks, curbstones, fences, &c,

X-Q. 511. Any other purpose.?

A. No, sir.

X-Q. 512. Did you do that in 1872?

A. I think so. It may have been 1873.

X-Q. 513. Was it known in 1872 that you went around there to keep people from stealing bricks?

A. I do not know.

X-Q. 514. Can you state any act that you did in reference to this property in 1872 besides what you have stated?

A. Not without reference.

X-Q. 513. Reference to what?

A. Papers, memoranda, &c.

X-Q. 514. I ask you to look at these papers and memoranda of reference by to-morrow evening, and find out what you did in 1872. What did you do in 1873 in reference to this property?

A. You might as well wait for that, too. I will look up memoranda &c.. and answer to-morrow night.

X-Q. 515. Can't you answer now?

A. No.

X-Q. 516. Can you mention what you did in reference to the property in 1874?

A. No.

X-Q. 517. Or 1875?

A. No.

X-Q. 518. Or 1876?

A. No.

X-Q. 519. I understood you, then, that you have no recollection now of what you did during any of those years?

A. I havs no specific recollection from which I could designate what I did on the first Thursday in October, 1871, or the *ninth* Wednesday in June, 1873. I take it collectively, and if you want a specific answer I shall refresh my mind as best I can, and endeavor to answer your questions.

X-Q. 520. I will not confine you to date, but ask you, between the time of the purchase of this property and the dissolution of the firm of Kilbourn & Latta, what acts you can remember that you did in reference to it, which constituted the care and management of it. I ask now, you understand, for specific acts.

A. One thing that we did, was to—and it was accomplished very largely through our instrumentality—repeal the sewer tax, which was a very heavy tax on this property (one-and-a-half per cent. of its entire value), and, if I remember rightly, valued at between two and three hundred thousand dollars, or, perhaps about $250,000. I do not remember exactly about that, though.

X-Q. 521. That sewer tax was a tax for all the city. All the city was interested in the repeal of it, was it not?

A. But all the city did not do much more than you did in regard to getting it repealed.

X-Q. 522. Mention now what else you did.

A. We attended to the tax, as I said; we looked after the improvements, protected property, and after the panic of 1873, I don't think it will be gainsaid by anybody, that we did more, perhaps, than all other parties in town together, to keep prices up and keep a break from occurring. If we had not done more than the owners of the property did, it would have been completely sunk. We used to write almost every week, some one of us, articles for the papers, and sent copies to you very often. We were bolstering up the real estate market in the city. We could not have done more than we did if the property had been our own.

X-Q. 523. Well, is that what you mean by care and management of this property?

A. By the term "care and management," I do not know that that has any specific meaning.

X-Q. 524. Can you mention any specific act that you did for the benefit of this property directly during the period referred to, besides, of course, the accounts of disbursements of the funds of Sunderland, Hillyer and Sunderland?

A. Well that of itself compelled us to keep a book-keeper at $1,800 a year from 1873 until 1877.

X-Q. 525. As we are about to adjourn, I will ask you to look over such papers, memoranda, &c., as you have and by to-morrow evening to state, as far as you then may be able to, what acts were done by the firm of Kilbourn & Latta for the benefit of this property, between the date of its purchase and the dissolution of the firm.

Cross-examination resumed on the following evening.

* * * *

X-Q. 531. State, without reference to the year or month, specific acts which were done, or any specific act which was done by the firm of Kilbourn & Latta, for Sunderland & Hillyer between the month of June, 1872, and the 1st of January, 1877, outside of what appears to have been done in the account current, which was rendered to them in the year 1878?

A. Except what I have stated in my direct examination in this case, which was a general statement, I am unable to specify any particular things that we did. We took the places of two gentlemen who were at that time supposed to be very wealthy and to whom this property seemed to be a *bagatelle*, and who had left the country for an indefinite time, who paid no attention to it whatever, whose circumstances changed and their notes that were given fell due and were unpaid, and our credit was largely impaired, as the property was supposed—on account of the manner in which it had been managed—to belong to the firm of Kilbourn & Latta; that is, that they were responsible for it. People, of course, knew that it did not all belong to the firm, but that it was an arrangement in which the firm was largely interested, whose notes falling due had to bolster up the credit of people who paid no attention whatever to their business, responded to no letters that we wrote them asking for money to carry on their property and pay their debts; gave us no advice except that the property ought to take care of itself, which left the entire burden of carrying that amount of property from 1874 or 1875—1874 I think it was, to the dissolution of the firm in January, 1877, on the hands of Kilbourn & Latta. In several instances the firm of Kilbourn & Latta gave their —I was going to say their notes, and I am not sure that we did not—but we gave our indorsement for extensions of the notes on this property we represented, were a little embarrassed to-day but would be all right to-morrow, and so carried the whole thing through from the panic of 1873 until the dissolution of that firm. We did with that property just what we would have done with our own property, if we had bought it and expected to make a large sum of money out of it, as these gentlemen did, and reverses had come. And we did everything we could to carry it through and help them out. I do not think that three men ever served their clients with more fidelity, with greater zeal, than we served Sunderland & Hillyer in the management of that property, and there was no question about that service at all. It was recognized by both Sunderland & Hillyer until 1878, when they found we charged them $5,000 a year for doing it, and their circumstances had changed to such an extent that dollars and cents counted more to them then than the services rendered. Then they thought it a little too high, but they did not think it was much too high. I will say further that at the time a receipt was given for the balance that was in the hands of Kilbourn & Olmstead, of the unexpended moneys turned over by Kilbourn & Latta, the question of this matter of commissions was raised, and Judge Sunderland said to me that so far as Kilbourn and I were concerned he did not care a damn about it, but that they proposed to go for Latta, and consequently they did not want that receipt to stand as a bar against this claim for compensation, and I accepted it as such.

X-Q. 532. Have you stated now, in your long narrative, all that you have to state in answer to my question as to the specific acts or services which were rendered by the firm of Kilbourn & Latta for Sunderland & Hillyer during the years mentioned?

A. I have said in the start that I was unable to state to-night, specifically, anything that occurred in any months or years.

X-Q. 533. Do you know anything more to state?

A. Well, I think I do. I hope I do.

X-Q. 534. State it, then.

A. Oh, as this matter has been out of my mind so long, and I did not think from the manner and treatment of these gentlemen that they had any particular idea of a claim against the firm of Kilbourn & Latta in that matter, I have not thought of it.

* * * *

X-Q. 545. I understand you, then, that you do not consider the prevention of contractors from stealing sidewalks any considerable part of the services rendered by the firm of Kilbourn & Latta?

A. I think it quite a considerable part. It required a good deal of time. It required us to be constantly on the alert, to be around about the property every day, and during some of that time it was not exactly convenient to get around.

* * * *

X-Q. 663. Prior to the 1st day of July, 1876, was there any indebtedness of Sunderland & Hillyer on account of any of the real estate transactions which passed into the books or through the hands of the firm of Kilbourn & Latta which had been or was overdue?

A. I do not remember whether there was or not.

X-Q. 664. Can you find from your books or in any other way that there was?

A. I can if you will give me time to do it.

X-Q. 665. You think there was something overdue, then?

A. The impression on my mind was that there was, but I may be mistaken.

X-Q. 666. So far as you are able to state, then, from anything that you know up to that time, all their indebtedness as it fell due had been paid at the time. Is that true?

A. Yes, that is substantially true.

X-Q. 667. If you never advanced any money for Sunderland & Hillyer, and their debts were not overdue, what do you mean by saying that the firm of Kilbourn & Latta carried them?

A. I have not stated that they carried them.

X-Q. 668. What do you mean by stating that the firm of Kilbourn & Latta was embarrassed in its credit by reason of its transactions with Sunderland & Hillyer, if these facts you now state are true?

A. I stated that, owing to the panic of 1873, and being unable to convert funds or to get currency, I stated what I did in this connection simply as to 1873 and not to anything since that. I do not remember about anything since, and I will look up the matter.

X-Q. 669. You mean to say, then, that what you meant by the firm of Kilbourn & Latta carrying their indebtedness, and being embarrassed, consisted of the fact that, in 1873, at the time of the panic, while Sunderland & Hillyer had money in your hands, the banks were unable to furnish the currency; is it not?

A. That was one of the embarrassments.

X-Q. 670. State something else, if there are any others.

A. I do not know that there are. I will look over the records and see.

X-Q. 671. Is it not a fact that during all those years Sunderland & Hillyer came nearer carrying the firm of Kilbourn & Latta than the firm of Kilbourn & Latta came near carrying Sunderland & Hillyer?

A. That might have been a fact if they had paid any attention to their business at all, but I don't think it is.

X-Q. 672. Was not Mr. Sunderland here in Washington till March, 1873?

A. I do not remember when he went away. I think it was in the spring of 1873. It was then that he went to Europe, I think.

X-Q. 673. You say he did not attend to his business while here?

A. No, sir, nor you either.

X-Q. 674. Did not Mr. Hillyer return from Europe in October, 1873, and remain here during the years of 1874 and 1875?

A. He returned in 1873, I think, right after the panic. I think he was here during portions of the years 1874 and 1875.

X-Q. 675. Didn't he have an office here to transact business, and reside here?

A. Well, he had an office here.

X-Q. 676. Was he not here nearly all the time?

A. I don't remember about that. I do not think he did. My recollection is that he was not here a great portion of the time.

X-Q. 677. Can you state anything accurate about that?

A. I cannot.

X-Q. 678. Was not Mr. Hillyer here until the month of July, 1876, during

1874 and 1875 up to July, 1876, with the exception of two or three months?

A. I think he went to California two or three times during that time, and I think he went away to the seashore another considerable portion of that time. I know he stated to me once that his office hours were from 10.30 to fifteen minutes before eleven I don't know how much business he did.

X-Q. 679. After July, 1876, and up to the time of the dissolution of the firm, what debts, if any, were overdue of Sunderland & Hillyer?

A. You have asked me that question two or three times; and I told you, that without reference I could not answer.

X-Q. 680. What did you mean, then, by saying that the firm of Kilbourn & Latta was annoyed and vexed, and their credit injured by the failure of Sunderland & Hillyer to pay what they owed?

A. I answered that question in general, and now you ask for a specific answer.

X-Q. 681. Do you mean to state such a fact in a general way, and yet cannot mention a specific fact to sustain your statement?

A. I just mentioned, from memory, what we did during that period.

X-Q. 682. What did you have to do in reference to the business of Sunderland & Hillyer? You stated that you had to support their credit; I wish to know what you did in that respect?

A. I have not said that.

X-Q. 683. You used the expression "bolstered up their credit." I want to know what you meant by that?

A. I did not state that. I think we had to bolster up Sunderland & Hillyer is what I said, and what I meant by that was this property.

X-Q. 684. What you meant by that, then, and by all that you have stated in that regard, was that you had to attempt to keep up the price of property; is that it?

A. That was a very considerable portion of what we had to do. Whether we did anything else I do not remember.

X-Q. 685. What did you do towards keeping up the price of property?

A. Well, I have answered that question three or four times.

X-Q. 686. I wish you to answer it again, because I do not remember of its having been answered.

A. One credit that we had in this town was that of being called the bulls in real estate; that we wrote articles for the papers in regard to Washington, its desirability as a place of residence on account of the comparatively low price of property and low tax on property. And each year we used to, at a very considerable expense in the way of time and money, publish a statement of the transfers of real estate. We kept a record of these transactions and every year, and sometimes oftener, publish statements showing the amount of property transferred during the year. Then we wrote editorials in regard to and comparing it with the condition of the real estate market in other considerable cities, in order to show that the panic and the attendants had scarcely affected the value of property in Washington, while in New York, Chicago, St. Louis, and other cities, the values of property had greatly changed; that it was only a temporary stagnation in Washington rather than any break in values. In other words that property had never reached its full value here as compared with other cities.

X-Q. 687. Is what you have mentioned an element in the charge made by the firm of Kilbourn & Latta for care and management, to Sunderland & Hillyer?

A. It enters into it, somewhat, I guess. We treated Sunderland & Hillyer as we would treat ourselves. We studied their interests as closely as we could possibly have studied our own. We considered the keeping up of that property of as much interest to us as if we had owned it, and I think succeeded.

X-Q. 688. At the time of the dissolution of the firm, how much of Sunderland & Hillyer's money was in your hands? I speak of prior to the time of taking out $22,000, which you took out for what you called care and management.

A. $18,126.84.

X-Q. 689. That is besides this $22,000?

A. That is the balance in the hands of Kilbourn & Latta when the firm dissolved.

X-Q. 690. Were there any creditors pressing at that time?

A. I do not remember whether they were or not.

X-Q. 691. Without taking out $22,000, you had $40,000 in your hands at that time, didn't you?

A. The firm had $18,126.84 in its hands then.

X-Q. 692. That was after taking out the $22,000, was it not?

A. That was taken out long before.

X-Q. 693. How long before?

A. Every year.

X-Q. 694. You have stated here, in answer to a question, that during the existence of this firm the creditors of Sunderland & Hillyer had to be pacified by the firm of Kilbourn & Latta, at great expense to the credit of the firm. Now state what you meant by that?

A. I have stated.

X-Q. 695. Well, state it again, please?

A. I have stated it in regard to Thomas Young, and I think August Muller. These are only two creditors that I happen to remember now.

X-Q. 696. August Muller was a creditor of Sunderland & Hillyer to what amount?

A. I think $11,000.

X-Q. 697. When was it due?

A. I think in the early part of 1876. I do not remember now, exactly.

X-Q. 698. Due in June, 1876, was it not?

A. I think that was the time; yes.

X-Q. 699. Did not Mr. Muller have a mortgage upon the whole square 66, as security for that?

A. He did.

X-Q. 700. That included the dwelling house erected by Hillyer, did it not?

A. It did.

X-Q. 701. That dwelling house cost $50,000, didn't it?

A. I think it cost more.

X-Q. 702. Did not the square, independent of the improvements on it, cost Sunderland & Hillyer $25,000?

A. It did.

X-Q. 703. Do you mean to say August Muller was pressing for the note of $11,000, secured on a house and property of over $70,000?

A. I do. It was not a question whether a man had security back of his indebtedness, or not; but when they thought they could not get the money, they wanted it.

X-Q. 704. Is that what you mean by straining the credit of Kilbourn & Latta?

A. That is one of the things; yes.

X-Q. 705. Was the firm of Kilbourn & Latta, or any of the members of that firm on the note of Muller?

A. No.

X-Q. 706. No one of them?

A. No, sir.

X-Q. 707. Then what had they to do with it?

A. Only that Muller knew that the property was transferred to James M. Latta, trustee, and he looked to James M. Latta as the payee of that note.

X-Q. 708. Did Muller know who owned the property?

A. At the time you bought it?

X-Q. 709. Do you mean to say that Muller looked to Kilbourn & Latta for payment of that note, secured in the manner in which it was?

A. Yes; he called on the firm for payment.

X-Q. 710. What do you mean by that?

A. I mean that he came to the firm of Kilbourn & Latta for payment of that note and supposed that that property belonged to the firm. He was not an intelligent gentleman, to whom explanations could be made, and the only thing to do with him was to tell him that it would be paid in a short time, and fix it up this way or that way.

X-Q. 711. Do you mean to say that Mr. Muller represented to the firm that he thought the property belonged to it or had anything to do with paying this note?

A. I do not think he represented or said anything about that.

X-Q. 712. Why do you think he thought so?

A. By his calling on the firm for payment.

X-Q. 713. Can you mention any other instance where the firm of Kilbourn & Latta were harassed by creditors of Sunderland & Hillyer than what you have said about Muller?

A. I have answered that three or four times, that, without refreshing myself from the records, I cannot recall any other instance.

X-Q. 714. Why did you make that statement in your testimony and answer if you cannot now recall any instance of it?

A. Because I believed it to be true, and do yet.

X-Q. 715. Do you think you have a right to assert upon oath a statement of that kind when you have no recollection in regard to the facts upon which it is based?

A. I do not think I have stated in the sense in which you have put it. I have stated generally in answer to a general question.

X-Q. 716. I will ask you no more about that this evening, but as the examination is going on to-morrow even-

ing, I wish you to examine your record and see if you can ascertain anything that after such an examination you will be willing to testify that the creditors of Sunderland & Hillyer were annoying and impairing the credit of the firm of Kilbourn & Latta, and who were required to be pacified by the exertions of that firm.

A. I have volunteered to do that some time ago.

X-Q. 717. Who told you that he looked to the firm for any indebtedness due from Sunderland, Hillyer & Co.?

A. Thos. Young.

X-Q. 718. When?

A. In 1873, when his first note became due.

X-Q. 719. Where is Thos. Young?

A. He died a little while ago.

X-Q. 720. His note was paid, was it not?

A. Not at maturity.

X-Q. 721. How long after maturity?

A. Just as soon as we could get the banks to pay the checks.

X-Q. 722. You mean that it was a failure of the banks of Washington at the time of the panic to pay the indebtedness?

A. Yes; to pay the indebtedness that they admitted was owed by them. It was not on account of a failure by Sunderland & Hillyer to provide money, but on account of the condition of things from the panic. I said that two or three times.

X-Q. 723. You said that the firm of Kilbourn & Latta had $18,000 on hand, belonging to Sunderland & Hillyer, at the time of the dissolution of that firm. Who took that money after the dissolution of the firm?

A. Kilbourn & Olmstead.

X-Q. 724. How long did it take them to expend it?

A. Eight or nine months, before it was all paid out.

X-Q. 725. Were the creditors of Sunderland & Hillyer pressing at that time?

A. Not very much.

X-Q. 726. If they had been pressing, the firm of Kilbourn & Olmstead would have paid the money, would they not?

A. I think they would.

X-Q. 727. Was the firm of Kilbourn & Olmstead agent for Sunderland & Hillyer in 1877?

A. Do you know that is rather a mooted question. I do not know exactly whether they were or not.

X-Q. 728. What did they do for them?

A. Well, they did several things; they disbursed this money. One thing they did was to look after square 151, which was sold under a deed of trust, and instead of that property having to pay, as it was supposed it would under the terms of the trust, they allowed it to go to sale and got a very considerable increase of the credit at 6 per cent. interest, which I think was a great benefit, and was so recognized by Mr. Hillyer when I told him about it. He seemed quite satisfied.

X-Q. 729. Did the firm do about the same in 1877 as it did previously?

A. It did very little in 1877.

X-Q. 730. What difference was there in what the firm did in 1877 from what they did in 1876?

A. Well, in 1877 Mr. Latta rather assumed the care and management of the property, and as Sunderland & Hillyer had not said anything, although they knew of the dissolution of the firm, and that Kilbourn & Olmstead succeeded the firm, we rather held back with natural diffidence from doing very much.

* * * *

X-Q. 849. What notes did you sign for Sunderland & Hillyer?

A. Notes that I signed?

X-Q. 850. Yes.

A. I do not remember signing any.

X-Q. 851. What notes did Kilbourn sign, to your knowledge?

A. I don't remember what notes he signed, or whether he signed any.

* * * * *

X-Q. 863. Were Kilbourn & Olmstead agents of Sunderland & Hillyer in 1877?

A. I said the other night that I did not know what they were.

X-Q. 864. What did the firm of Kilbourn & Latta do with reference to the business of Sunderland & Hillyer in 1877?

A. Did a great deal; looked after their interests as much as we could without seeming to push ourselves; we did not like to do anything, as we were not asked to do so.

X-Q. 865. What did Latta do in reference to their business?

A. I don't know what Latta did.

X-Q. 866. Kilbourn & Olmstead had $18,000 in their hands at the beginning of that year to disburse for Sunderland & Hillyer, did they not?

A. Yes, sir.

X-Q. 867. Why did they not give it to Latta or Sunderland & Hillyer?

A. Because we did not think that Latta was entitled to receive it, and we

thought under the dissolution agreement that the continuation of the business of Sunderland & Hillyer would remain with us, and Sunderland & Hillyer made no demand for it.

* * * *

X-Q. 912. What had been done by the firm of Kilbourn & Latta in reference to special taxes of Sunderland & Hillyer?

A. I do not know what had been done prior to 1877. I did not think very much about it. You mean in regard to the revision, I suppose?

X-Q. 913. Yes.

A. I did not think very much about it. I had made that claim for damages of $20,000.

X-Q. 914. Nothing ever came of that except that the portion of that claim which was—— Was any portion of that ever obtained?

A. No.

* * * *

X-Q. 916. Why did you not charge Sunderland & Hillyer annually with the amount that was due for the care and management of this property?

A. For the reason that we did not do a great many things; we did not spread before our clerks a great many things that were done. For instance, contributing to various societies and institutions, &c. Whenever we did anything of that kind it was entered in the expense account and no explanation made of it. We did not purpose to have our business talked about.

X-Q. 917. Why did you not consult Sunderland & Hillyer, or one of them, before you made the charge?

A. We consulted with Mr. Hillyer before we concluded among ourselves what we would do. We consulted with Mr. Mattingly, who was considered quite competent to inform us upon the subject, as to what was the charge for care and management of estates, what fees were allowed to executors and administrators, and so on.

X-Q. 918. Did you think you stood in the shape of administrators or executors to this estate?

A. Well, we did approach near that, and pretty good executors. We did not hear from the parties often.

X-Q. 919. You have stated in your answer in this case that after 1873 you never did have any conversation of any kind with either Sunderland or Hillyer in reference to this matter?

A. No, sir, I had none.

* * * *

X-Q. 922. Did Mr. Latta tell you there was any agreement?

A. He did not. I never understood that any understanding was ever arrived at.

X-Q. 923. Why, then, didn't you think it proper to consult Sunderland & Hillyer, or one of them, before making your charge?

A. I have stated the reasons. At that time Sunderland & Hillyer were, as I supposed, quite wealthy, and it occurred to me that they did not think much about a charge of that kind, and I do not think they ever would have if they continued along in the same way.

* * * *

X-Q. 925. Why didn't you inform Sunderland & Hillyer, or one of them, immediately after this charge had been made?

A. For this same reason. We dropped the matter from that conversation with the full feeling among ourselves that Mr. Hillyer, who was acting in the matter, treated it with a sort of indifference. We had stated our price and he stated what he thought on the other hand was a large price, and then it dropped, and if anybody should object it was his business to object at that time and settle it.

X-Q. 926. You thought that a good reason for not mentioning it until a year afterwards, did you?

A. No account was ever demanded.

X-Q. 927. Do you mean to say that Sunderland & Hillyer did not demand an account in 1878, when they came here?

A. I do, most emphatically.

X-Q. 928. How came they to get it?

A. Voluntarily; and I made it when they got it.

X-Q. 929. That was the first time it appeared to them that such a charge had been made, was it not?

A. I guess it was.

X-Q. 930. Have you any other charge on your books for care and management of property?

A. I do not know; I think we have.

X-Q. 931. If you have, mention it.

A. I don't know that I can mention it now.

X-Q. 932. If you have any such, you do not recall it now?

A. No.

* * * *

X-Q. 935. Did Kilbourn & Olmstead have this $18,000 on hand at the time of the dissolution of the firm?

A. No, sir.

X-Q. 936. They had used it, then?

A. Before the 1st of May, 1877, they were ready to pay it over. We borrowed large sums of money on our own property to carry out our dissolution agreement.

Extracts from testimony of OLMSTEAD as to square 115.

A. to Q. 34. Their plaintiff's first allegation that they were advised that $65,000 was the lowest price at which they could purchase that property, is true. It is also true that we purchased that property for $40,000, or a little less, because we were allowed $1,000 commission upon it, and got it, therefore, for $39,000. We had been negotiating for that square, I think, four years before they purchased it, and we had an agreement with the owners of that square to purchase it for (I do not remember now just how long) certainly a month or six weeks, or something like that time, before we pointed it out to them.

* * * *

Q. 39. When was that final purchase made, with reference to the time when the sale of this square was made to complainants; before or after?

A. 39. It was before we ever called their attention to it. Until we acquired that property, we studiously avoided saying anything about it, and let nobody know anything in regard to it.

* * * *

Cross-examination by Mr. Hillyer:

A. to X-Q. 51. My recollection is, that we told Sunderland & Hillyer—I don't think there was any Stewart—that they could have that square for $65,000. They said they would take it. I don't think there was ever five minutes conversation about it, except the terms.

* * * *

Q. 54. Did you ever hold the title to it?

A. We did.

Q. 55. In whose name was the title held?

A. James M. Latta, trustee.

Q. 56. Was there ever a deed made by the firm of Kilbourn & Latta, or James M. Latta, trustee, conveying the property to Sunderland & Hillyer, or to anybody as trustee for Sunderland & Hillyer?

A. I do not think there was ever but one deed made.

Q. 57. To whom was it made, and by whom?

A. I think from the Institution for the Education of Colored Youth, to James M. Latta, trustee. The transaction was, you might say, simultaneous. We got the property and transferred it in a way that it should remain to Sunderland & Hillyer. We had been for four years, I think, trying to buy that property, and we had indirectly been for some little time educating the public mind to the idea of its value.

* * * *

Q. 64. Did you expect to sell that property when you bought it.

A. I think that our expectation was that you would pay $65,000 for it, if you could get it, and, if you did not, that somebody else would pay more, as the very day you agreed to take it, I think Mr. Ebon C. Ingersoll offered us $70,000 for it.

Q. 65. What made you think we would take it for $65,000?

A. Well, we had made up our minds that we would hold it until we got that much; that we would make that much money out of it before we would let anybody have it, and after we knew that we were going to get it we were looking around pretty lively for somebody to buy it at our price.

Q. 66. You never heard Sunderland & Hillyer say anything about it before that, did you?

A. Never did.

Q. 67. You did not know whether they had ever been examining that property with a view to purchasing it?

A. So far as I know, they never had. We were very careful that they should know nothing about it until we got it, or anybody else.

* * * *

Q. 69. Ebon C. Ingersoll is dead, is he not?

A. I believe he is.

* * * *

Q. 74. Whose money did you use in purchasing square 115, in making the cash payment?

A. We used what money we had in the box.

Q. 75. Whose was it?

A. I think it was ours. We kept no separate account with anybody's

money. All the money we had was in two bank accounts.

Q. 76. Did you not use money of Sunderland, Hillyer & Stewart?

A. No, sir; not necessarily.

Q. 77. Did not you have their money in your hands at that time when you made this cash payment?

A. I presume we did. We had quite a large amount of other money like theirs.

Q. 78. There for purchasing property?

A. There for purchasing property.

Q. 79. Did the firm of Kilbourn & Latta have any money on hand for the purpose of purchasing property at that time?

A. I decline to answer that question as I think it to be irrelevant to this case. Not that I have any objection, though.

* * * * *

Q. 85. Why were you in such haste to sell it to Sunderland & Hillyer?

A. I think the natural haste to make $25,000 would be a reasonable answer.

Q. 86. Did you consider the property worth $65,000?

A. I not only considered it worth $65,000, but I knew Sunderland & Hillyer were anxious to get it for $65,000. They did not hesitate, I don't think, for five minutes after they were told they could get it at that price.

* * * * *

Q. 89. How long had you owned it absolutely before you sold it to Sunderland, Hillyer & Stewart?

A. I do not say that we absolutely owned it. That is, I do not think that we held a legal title of it forty-eight hours. We arranged that in this way: The property should be transferred to James M. Latta, trustee, and that James M. Latta, for the consideration of $40,000 would let the deed remain as the title that Sunderland & Hillyer held for that property.

Q. 90. Did you, during those forty-eight hours, make any attempt to sell it to anybody else?

A. I think we called the attention of two or three parties to it. I do not know positively whether we did or not.

Q. 91. Why did not you sell it to the other parties?

A. Well, we were quite satisfied to sell it to you.

Q. 92. Did anybody else offer you $65,000 before Sunderland & Hillyer bought it?

A. I do not think they did.

Q. 93. Did anybony else offer you $40,000 before Sunderland & Hillyer bought it?

A. We did not offer it to anybody directly until we offered it to you.

* * * * *

Q. 101. Up to the forty-eight hours from the time this property was sold by you to Sunderland, Hillyer & Stewart, was there any reason why Sunderland, Hillyer & Stewart should not have bought this property themselves from the charitable corporation by whom it was owned, at the price of $40,000 or $41,000, if they choose to outbid Kilbourn & Latta in reference to it?

A. I am sure I do not know.

* * * * *

Q. 107. Do you know any reason why, prior to the 15th day of May, Sunderland & Hillyer, if they had wanted to buy Square 115, could not have gone to the trustees of this institution and have bought it for the sum of $41,000?

A. Yes.

Q. 108. State what it is?

A. Because they did not know the trustees and did not know anything about the square except that there was an open lot there.

Q. 109. You know of no other reason than that which you have stated, do you?

A. I do not know whether I do or not. I might have known some other reason then, which has now escaped my memory.

* * * * *

Q. 205. At the time you bargained for and sold this property to Sunderland, Hillyer & Stewart, did you tell them who had previously owned it?

A. I do not think we did. I am sure I did not. I was not in the habit of telling them, or anybody else, things that did not pertain to them.

Q. 206. Why did you charge commissions to the Institution for the Education of the Colored Youth, on the purchase of this property by you from them?

A. I have not stated that we did, have I?

Q. 207. I will ask you if you did?

A. I think we did.

Q. 208. I now ask you why you did it?

A. I do not know now why we did it. Probably because we could and they were willing to pay it.

* * * * *

X-Q. 394. Why did you charge Sun-

derland, Hillyer & Co. with the trust deed on square 115?

A. Because they assumed the trust, and it belonged to them to pay for it.

X-Q. 395. What I mean is, why did you charge them with the expense of that deed?

A. For that reason.

X-Q. 396. Did not you state in your former examination that the deed, when it was made, was made to Latta, as trustee for the firm of Kilbourn, Latta & Olmstead?

A. I did.

X-Q. 397. Then why did not they pay for this trust deed?

A. Because the transaction was simultaneous. We held that refusal until we sold the property to you, and we kindly allowed you to pay the expenses.

X-Q. 398. Did you tell the trustees of the institution from whom the property was purchased that you were buying for yourselves or others?

A. I did not; we told them no more than we told you; we would not be apt to.

X-Q. 399. Can you answer the question?

A. I do not think we told him anything about it. I think I made all the negotiations made in regard to it, and I don't think I said anything to them about it, one way or the other.

X-Q. 400. Did you tell Sunderland, Hillyer & Co., before you sold to them, that you had purchased the property?

A. Not if I remember arightly.

X-Q. 401. Well, do you mean by that that you did not do it?

A. I do, certainly.

* * * * *

KILBOURN on direct examination testifies as follows as to square 115:

Q. 100. Did Mr. Hillyer know that the firm had bought the property and had been negotiating for it all those months?

A. He knew that the firm had been negotiating for the property, because there could not be anything definite until these negotiations were terminated.

Q. 101. How do you know that he knew about the negotiations?

A. I told him myself that we were negotiating about the property.

* * * * *

Q. 108. Are you able to state, positively, that Hillyer, or either Hillyer, Sunderland or Stewart, knew, at the time they began these negotiations for square 115, that Kilbourn & Latta owned it, or had secured the control?

A. I do not know that I ever had any conversation with Mr. Stewart about it. Sunderland and Hillyer knew that we were negotiating for that property. They asked me about it, and I had various conversations, I think, with Colonel Hillyer, and perhaps Sunderland, pending the negotiations that we were making, and when they were perfected, I stated, I think myself, to Colonel Hillyer, the price at which he could have that square.

Q. 109. What did he say about it?

A. He agreed to take it. I do not know whether he did that day, when I first told him, but after some talk he agreed to take it. Possibly he and Sunderland were together. I do not remember about that.

* * * * *

Q. 112. Did Col. Hillyer know that the firm owned the property, controlled it, and that was the price the firm demanded, or the price the charitable association demanded?

A. I do not know whether he knew who owned it at the time I told him it could be had for $65,000. I told him at that time that it was perfected, so that he could get it at $65,000.

Q. 113. The price of $65,000?

A. Yes, sir.

Q. 114. Was there anything said by you, or any member of the firm, in your presence or hearing, that the charitable association demanded $65,000?

A. There was not.

Q. 115. What was said between you and Hillyer about the charitable association, if anything, and their terms?

A. I do not know that anything was said about the charitable institution to the firm of Sunderland & Hillyer. Sunderland & Hillyer knew the original parties whom we were negotiating with, if it was this charitable institution, or whatever institution it was.

Q. 116. Did you ever tell Hillyer, or either of those gentlemen, who owned the property before you got it?

A. They knew, as everybody else

did, who were the original owners of it.

Q. 117. Did they know at the time they bought it, and before you got it?

A. Certainly they did.

Q. 118. Who told them?

A. It was talked of in the office. Everybody knew it.

Q. 119. Did you tell Mr. Hillyer?

A. Yes, sir. They knew who the original owners were.

Q. 120. And he knew about the negotiations between your firm and the original owners, the charitable association?

A. Yes, sir.

Q. 359. Did you tell the complainants in this case, or do you know of their being told, at any time prior to their purchase, the fact that you had been, or were, negotiating for the purchase of this square for yourselves? I mean for the firm of Kilbourn & Latta.

A. I know I informed the complainants in this case that we were negotiating for the square, and had been for some time.

Q. 360. You do not understand my question. The question was: whether you informed them that you were negotiating for the purchase of it for yourselves?

A. I do not know whether I stated that to them or not.

Q. 361. So far as you know, then, the complainants did not know the fact that you were the purchasers, or that you were negotiating for the purchase for yourselves of this property, prior to the sale to them?

A. They could infer that fact from my stating to them that we had been negotiating for it for a long time.

Q. 362. Except by that inference you do not know of their having any knowledge of the fact that these negotiations were for yourselves?

A. I do not know that I ever stated to them that we were buying for ourselves, and do not know but I did. I do not remember in regard to that.

IN THE

Supreme Court of the United States.

OCTOBER TERM 1888.

SUNDERLAND & HILLYER
vs.
KILBOURN, LATTA & OLMSTEAD. } No. 188.

Additional Paragraph to Brief for the Defendant, James M. Latta.

1. From the evidence cited in the brief, it appears that Mr. Latta had become liable for very large amounts of money, not only for Sunderland & Hillyer, but also for Sunderland.

2. In December, 1876, the firm of Kilbourn & Latta dissolved.

3. After that dissolution, Mr. Latta had the responsibility of taking care of the said indebtedness.

4. The character of that indebtedness and the nature and extent of the services required to be performed will be seen by reference to the letters written by Mr. Latta to these complainants, beginning at page 102 of the Record and ending at page 111. These letters show that the condition in which the complainants had left their business involved much in the way of negotiation and management, in order to save this property from being sacrificed to satisfy the encumbrances that were upon it.

And further, in respect of this, we beg the attention of the court to the testimony of Mr. Latta, as found on pages 94 and 101 inclusive, of the Record. It will be seen that on the 15th of June, 1878, Mr. Latta rendered his account, Exhibit E, page 253. At pages 255 and 256, he distinctly made a charge for care and management as trustee. This was three years, lacking eleven days, before the suit was brought.

He not only rendered this account, but he personally called the attention of the complainants to it, and no dissent was made, as appears by his testimony at the pages above referred to.

While it is true that not quite three years have elapsed since this matter was brought to the knowledge of complainants, yet we contend that the acquiescence in this statement of account for nearly three years precludes the complainants from now denying the right of the defendant, Latta, to retain the money so applied by him in satisfaction of said charge. (See authorities cited at pages 74–75 of the brief.)

But whether that be so or not, the character of the services rendered by him in his capacity as trustee, as indicated by the testimony and letters above alluded to, was such as to justly entitle him to the compensation which he claimed. The amount charged was no more than the regular commissions of a trustee would be under like circumstances.

ENOCH TOTTEN.
SHELLABARGER & WILSON.